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ABSTRACT

As indigenous peoples in the Arctic move closer to sovereignty, self-sufficiency in the realm of criminal justice assumes paramount importance. This book outlines initiatives and strategies to improve the delivery of justice services to aboriginal peoples in Canada, Alaska, and Greenland. Topics include: social and spiritual causes of alcoholism and alcohol abuse among Alaska Natives; the indigenous understanding of self-government, based on traditional values; evolution of self-government among the Carrier tribe of British Columbia, and comparisons with tribal government structures in Alaska Native villages; the Dene Justice Project and traditional Dene methods of social control; a community-based system of justice on the Sandy Lake Reserve, Ontario (Canada); the struggle of the Metis people for recognition; history and practices of the Greenland justice system; Native policing programs in Alberta (Canada) and Greenland; community centers for legal services and legal education; the role of Native courtworkers; the province and tribal courts; a spirituality-based model for mediation and conflict resolution; maximizing community involvement in the juvenile justice system; a Junior Achievement program for community youth or young offenders; specialized foster family care; interpersonal violence and youth suicide among Greenland Inuit; family violence; the Sitka (Alaska) Alliance for Health; and writing skills for community-based justice administrators. (SV)

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THE NORTHERN JUSTICE SOCIETY™

SELF-SUFFICIENCY IN NORTHERN JUSTICE ISSUES

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SELF-SUFFICIENCY IN NORTHERN JUSTICE ISSUES

A Publication of The Northern Justice Society™
and Simon Fraser University

Edited by Curt Taylor Griffiths

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The success of the program was due in large measure to the ongoing support of the Department of Justice, Canada, specifically that of Mr Dan Préfontaine, Assistant Deputy Minister, Policy and Planning. Special thanks goes also to the Ministry of Solicitor General, Canada, for its ongoing involvement and counsel through Daryl Webber, Senior Policy Analyst.

In addition, the strong participation by individuals from First Nations and provincial, federal, and territorial agencies and communities has ensured that the very best in new research and initiatives in northern justice programming are presented at the Northern Conference and presented in its publication.

Finally, a debt of gratitude is owed to the School of Criminology and to Continuing Studies at Simon Fraser University for continuing to provide an educational base for The Northern Justice Society™.

The Board of Directors of The Northern Justice Society™ has designed this publication to be of use to all those involved in the development and delivery of justice services in northern and rural areas of Canada, Alaska, and Greenland and it is to their tireless efforts that this volume is dedicated.

Margit Nance
Director, Public Policy Programs
Continuing Studies
Simon Fraser University
and
Executive Director
The Northern Justice Society™

PREFACE

As indigenous peoples in the northern and rural areas of Canada and the circumpolar north move ever closer to self-government and sovereignty, self-sufficiency in the realm of criminal justice assumes paramount importance. This resource publication is based on the materials presented in workshops and short courses during the fifth meeting of The Northern Justice Society™ held in Sitka, Alaska, April 1991. The meetings, the first ever of The Northern Justice Society™ to be held in the state of Alaska, brought together a wide range of participants from Canada, Greenland, and Alaska to consider initiatives designed to improve the delivery of justice services to aboriginal peoples. The underlying theme of the discussions was the potential of self-sufficiency in the justice area and the strategies which both personnel working in the criminal justice system and indigenous communities, organizations, and individuals can use to facilitate this process.

While space limitations have necessitated the editing of large amounts of materials and ideas presented in Sitka, it is hoped that both the spirit and the substance of the discussions which took place have been retained in this volume. Following some of the sections, there is a listing of selected resource readings related to the topics discussed. All of these materials are available from The Northern Justice Society™ Resource Centre, located in the School of Criminology at Simon Fraser University. Readers of this volume are urged to make use of the extensive collection of published and limited-distribution materials relating to northern and indigenous justice issues which are housed in the Resource Centre and which are also accessible to northern communities and agencies by computer link.

Please note that the opinions and ideas expressed by the participants who appear in this resource publication are their own and do not necessarily represent the policies and position of The Northern Justice Society™, its Board of Directors, or the agencies and organizations with which the individuals on the Board of Directors are affiliated.

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ABOUT THE NORTHERN JUSTICE SOCIETY™

The Northern Justice Society™ (previously The Northern Conference™), is an education and information network for individuals and organizations involved in the delivery of justice services across the north. The Society was established on one key premise: that those directly affected by the administration of justice in the north must be directly involved in practicable policies that can bring about effective solutions to the particular justice and social problems in their communities.

In the broadest terms, the society serves northerners, and Native northerners in particular, in Canada, Alaska, and Greenland. More specifically, the society seeks to foster communication and understanding amongst professionals, paraprofessionals, community groups, and community representatives who share a concern for developing and enhancing community-based justice services and for increasing the responsiveness and relevance of existing services.

Program information can be obtained from The Northern Justice Society™ Office, c/o Continuing Studies, Simon Fraser University, Burnaby, British Columbia V5A 1S6, or telephone (604) 291-3792/291-4565, fax (604) 291-3851.

Requests for materials on program initiatives, resource persons and organizations, and policy and programs relating to northern and Native justice issues should be directed to The Northern Justice Society™ Resource Centre, c/o School of Criminology, Simon Fraser University, Burnaby, British Columbia V5A 1S6, or telephone (604) 291-4239, fax (604) 291-3851.

TABLE OF CONTENTS

Chapter Page

1 Yu'Ya'Raq: The Way of the Human Being 1

2 Self-Government 37

3 Justice and Nation Building: A Comparison of the Lheit-Lit`en Process and Tribal Government in Alaska 71

4 Dene Traditional Justice 91

5 Current Initiatives on the Sandy Lake Reserve, Ontario 95

6 The Struggle for Recognition: Canadian Justice and the Métis Nation 107

7 Justice in Greenland 121

8 Native Peacekeeping: Challenges and Opportunities of the 1990s 141

9 Current Issues and Future Challenges in Aboriginal Policing 149

10 Policing in Greenland 163

11 The Relevance of Community Legal Service Centres 171

12 The Native Community Legal Education Centre in Souix Lookout 185

13 The Changing Role of Native Courtworkers 195

14 The Role of the Province in the Establishment of a Tribal Court 203

Chapter **Page**

15 Unlocking Aboriginal Justice: Alternative Dispute Resolution for the Gitksan and Wet'suwet'en People 213

16 A New Mediation Model for Use in Aboriginal Communities 253

17 Maximizing Community Involvement in the Youth Justice System 267

18 Mistik North: A Program for Community Youth and Young Offenders 291

19 Designing A Specialist Foster Family Care Program in Northern Communities 301

20 Youth Suicide and Problems of Modernization in Greenland 321

21 Preventing Family Violence in Northern Communities 337

22 Causes and Remedies of Interpersonal Violence Among Greenlandic Inuit 351

23 The Sitka, Alaska Alliance for Health 365

24 The Nishnawbe-Aski Legal Services Corporation: Its Origin, Mandate, and Research Program 373

25 Writing Skills for Community-Based Justice Administrators 389

List of Resource People 413

1

YU'YA'RAQ: THE WAY OF THE HUMAN BEING

RESOURCE PERSON

Harold Napoleon, Yupiq, Hooper Bay, Alaska

Harold Napoleon discusses the causes of alcoholism and alcohol abuse amongst Alaska Native people.

INTRODUCTION

For the past four years I have repeatedly tried to write letters and papers addressing the problem of alcoholism and alcohol abuse among Alaska's Native people. Each time I have tried, I have stopped, or thrown the paper away, because the picture was never complete. There was always something missing, like an incomplete sentence.

Since the death of my son, due directly to my own abuse and addiction to alcohol, understanding the causes of this disease has occupied much of my time here at the Fairbanks Correctional Centre. This prison has been like a laboratory to me—there is no shortage of subjects to be studied—namely, Alaska Natives from all parts of the state whose own abuse of alcohol has also brought them here.

From my own family and village history and the histories and backgrounds of the hundreds of young Native people I have met, I have a profile of the Native addict or abuser. In almost every case, while the subjects may be from different villages and tribes, the background remains the same. So now it is possible to make fairly accurate statements about the causes or cause of this disease and heartbreak. It also helps to understand the hopelessness, the frustrations, the anger, the prejudice so many people have, which tragically erupt into violence under the influence of alcohol.

The theory that Native people are somehow biologically susceptible to alcohol abuse and alcoholism, may have some credence, but I have discounted it as being almost insignificant. Through my own studies of the history of the Alaska Native people, the history of the abusers and alcoholics I have met here, and by listening to elders, I have come to the conclusion that the cause of alcoholism and alcohol abuse is primarily one of the spirit—it is not physical. To carry this one step further, since the disease is not physical or caused by physical or biological factors, then the cure must also be of the spirit. I will try my best to explain this.

As to my "credentials," I do not hold a Master's or a Doctorate, but I am a Yupiq Eskimo and was born into a world that no longer exists. My education began in my village of Hooper Bay. I did not begin to learn English until I went to school at six years of age. I then was sent at age twelve to Copper Valley School, supposedly because the school in my village could not teach me what I needed to know.

I love to read. From the first day that I learned the alphabet and acquired a dictionary I have read everything I could get my hands on. I ruined my eyes reading. The whole world opened up to me and I drank it in thirstily. I do not wish to boast, but I think I know the English language as well as, if not better than, most English speakers. I learned it from books. I am also fluent in my Native tongue, and I think in my Native language.

I graduated from St Mary's High School in May 1968 and was valedictorian of my class. Thereafter, I went to Great Falls, Montana for my first year of university. I chose to study history. From there, I transferred to the University of Alaska. I studied history there, too.

In 1972, I became Executive Director of the Association of Village Council Presidents and in that capacity got to know more intimately my own Yupiq people. All I had to offer them was ideas and I never tired of presenting them. The germ of freedom and self-government was introduced to my people then and, happily, today, they still seek independence and self-government. I was tireless, I was twenty-two, and I fell in line with them. Soon their problems became mine. Naively, I thought I could solve them all, but needless to say, I did not.

I helped house, clothe, feed, and educate them, protected their rights, lobbied on their behalf, fought tooth and nail for them—but I now see I failed to look to the most critical part of our existence, our spiritual well-being.

When I first started to work for our villages I did not drink. I did not like to drink—I didn't even like the taste. But after five years of countless meetings in Anchorage, Juneau, and Washington, being with others for whom drinking was a part of their lives, like so many other Native people, I soon became addicted. But I did not know this—it just became a part of my life.

Perhaps I took myself and my responsibility too seriously, but it was what I perceived to be my failures and the subsequent frustration and anger that led to my becoming an alcoholic. I was too young, too inexperienced, and I took everything to heart. But something in by soul, in by background, my family's and village's history, had pre-conditioned me to internalize and personalize every perceived defeat.

This is not to say I did no good. Certainly I must have, because, in many ways, I left our people in better shape than when they gave me so much responsibility at age twenty-two. I gave them my best, and so did my family. We sacrificed a great deal for them. I was hardly home, but my children had to stay home waiting for me. Yes, I gave it my best and my children gave me, their father, to others.

My whole adult life has been spent working for our Yupiq people. I have had no other employer but them. I have been their Executive Director, Vice-President, President, and Vice-Chairman. This is my history until June of 1984 when my world, as I knew it then, ended with the death of my son.

I am now thirty-nine years of age at the writing of this paper. This first twenty-one years of my life I was in school, and the next thirteen years I spend working for our Yupiq people. The last five years I have spent in prison as a direct result of my alcoholism.

These last five years I have spent grieving, not only for my son, but for all the others who have died in this long night of our alcohol-induced suffering. I have also spent that time looking into my own soul and the souls of my fellow Native people who have also become afflicted with this disease. And it is a disease.

It is a disease because the people who suffer from it did not volunteer to become infected. No one volunteers to live a life of misery, sorrow, disappointment, hopelessness. No one in his right mind chooses to lose a loved one, to break his family's heart, to even go to prison. It is a disease because no one will beat his wife, molest his children, or give them little rest, because he wants to. No man dreams of this. Yet sadly, this is what is happening too often in our villages and in our homes, and if we can, we have to stop it. We have to arrest this disease, this unhappiness, this suffering, and the good news is that we can.

This paper tries to deal with the causes of alcoholism and alcohol abuse among this generation of Alaska Native people. It is not intended to be a history or a study of the cultures of the various tribes. But because of the nature of the subject, pertinent aspects of the Old Cultures will be briefly discussed so as to give the reader some background and a better understanding of the subject. Things don't just "happen": there are causes, reasons, and should we understand these causes and reasons, then conceivably we will know how to better deal with the problem.

Although I am an "Alaska Native," I am in fact a Yupiq, and it is from this point of view that I think and write. However, I have found so many similarities among the various tribes in important cultural aspects that it would be safe to say that we are, in fact, one tribe, but of many families.

YU'YA'RAQ

Prior to the arrival of the Western man, the Yupiq was alone in his riverine and Bering Sea homeland—he and the spirit beings that made things the way they were. Within this homeland he was free and secure. He was ruled by the customs, traditions, and spiritual beliefs of his people, and was shaped by these and his environment—the tundra, the river, and the Bering Sea.

His world was complete—it was a very old world. He called it "Yu'ya'raq"—the way of being a human being. Although unwritten, it can be compared to Mosaic Law, because it governed all aspects of a human being's life. It defined the correct behaviour between parents and children, grandparents and grandchildren, mothers-in-law and daughters and sons-in-law. It defined the correct behaviour between cousins (there were many cousins living together in a village). It determined which members of the community could "talk" with each other and which members could tease each other. It defined acceptable behaviour for all members of the community. It outlined the protocol for every and any situation a human being may find himself in.

Yu'ya'raq defined the correct way of thinking and speaking of all living things, especially the great sea and land mammals on which the Yupiq relied for food, clothing, shelter, tools, and kayaks. These great creatures were sensitive—they demanded respect and were able to hear human conversations. Yu'ya'raq prescribed the correct method of hunting and fishing and the correct way of handling all fish and game caught by the hunter, so as to appease their spirits and maintain a harmonious relationship with them.

Yu'ya'raq explained the spirit world in which the Yupiq lived. It outlined the way of living in harmony within this spirit world and with the spirit beings that inhabited this world. To the Yupiq, the land, the rivers, the heavens, the seas, and all that dwelled within them were spirit, and therefore, sacred. He was born not only to the physical world of the Bering Sea, the Yukon, and the Kuskokwim Rivers—he was born into a spirit world as well.

His arts, his tools, his weapons, his kayaks and umiaks, his songs, his dances, his customs and traditions, his thoughts, his actions—all bore the imprint of the spirit world and the spirit beings.

The Yupiq, when he walked our into the tundra or launched his kayak into the river or the Bering Sea, entered into the spiritual realm. He lived in deference to this spiritual universe, of which he was perhaps, the weakest member. Yu'ya'raq outlined for the Yupiq the way of living in this spiritual universe. It was the law by which he lived.

THE SPIRIT WORLD

To the Western explorers, whalers, traders, and missionaries who first met them, the Yupiq were considered backward savages steeped in "superstition." Their villages were small and hard to find because they were part of the earth. Grass grew on their houses, making it hard to see the village. Only when the warriors came out in their kayaks and umiaks did the newcomers see them, surprised that humans would already be in this part of the world.

The river banks were red with fish drying on racks, along with seal, walrus, and whale meat. Women and children were everywhere, curious and afraid. The old men were curious but unafraid, their interest piqued by these white men who came on winged wooden ships.

They could not communicate by tongue, so they tried to converse by signs. The white men gave the Eskimo scouts small gifts. The Yupiq soon saw that these whites seemed friendly so they allowed them into the village, although the newcomers did not want to eat when offered food.

The visitors saw the semi-subterranean sod houses with underground entrances—they smelled the stench from within. They saw the oily unwashed faces and the tangled hair. They saw the worn skin clothes and smelled the seal oil. They saw the labrets, the nose bones, the beauty marks on the women, the fierce, proud faces of the men.

Then they were invited to a night of dancing. There they saw the wooden masks worn by the men during their dances. They felt the beating of the drums and were carried away by the singers, drummers, and dancers.

To the explorer or missionary witnessing the dancing in a dimly lit, crowded, stiflingly hot kas'giq (men's house), the men who were stripped of their clothing and the women who were dancing naked to the waist must have seemed like very heathen savages. The gussaks (or tanniks—the white men) thought they were witnessing a form of devil worship and might even have been frightened by it. The white men did not understand what they were seeing. They did not know it, but for a brief time they had entered into the spirit world of the Yupiq Eskimo.

To the Yupiq, the world visible to the eye, the world available to the senses, showed only one aspect of being. Unseen was the "spirit" world, a world just as important as the visible, if not more so. In fact, Yupiq life was lived in deference to this world and the spirit beings that inhabited it.

What the white men saw was not the worship of the devil, but a people "paying attention"—being mindful of the spirit beings of their world, with whom they had to live in harmony. They knew that the temporal and the spiritual were intertwined and they needed to maintain a balance between the two. The westerners had witnessed the physical representation of that spirit world as presented by dance, song, and mask. But they did not understand what they were seeing—they were strangers in the spirit world of the Bering Sea Eskimo.

IN'RUQ

The Yupiq work for spirit is "In'ruq." They believed that all things, animate and inanimate, had in'ruq. In'ruq was the essence, the soul, of the object or being. Hence, a caribou was a caribou only because it possessed a caribou in'ruq—a caribou spirit.

In'ruq were indestructible, unlike the bodies in which they resided. And in the case of men, fish, and game, death was the leaving of the body by the spirit due to fatal injury or illness. This is why the Yupiq prescribed respectful ways of treating even dead animals. They believed an in'ruq would in time take another body and come back, and, if it had been treated with respect, it would be happy to give itself to the hunter again. For a people solely dependent on sea and land mammals, fish, and waterfowl for subsistence, it was imperative that all members of the community treat all animals with respect, or else face starvation as a result of an offended spirit. For this reason, annual feasts were held, celebrating and appeasing the spirits of the animals the village had caught during that year. Some white men witnessed such feasts.

The Russian Naval Officer Zagoskin and the American ethnographer Edward William Nelson witnessed the "Bladder Feast." They called it that because the centre of attention seemed to have been the bladders of sea mammals hanging in the centre of the kas'giq. Hanging with the bladders were spears, throwing darts, bows and arrows—all the hunting implements of the hunters. Both observers were moved by the dancing, the oratory they did not understand, and the ritual. But what they did not understand was the unseen—the spirits represented by the bladders.

Not only the animals possessed in'ruq, humans also possessed them. But human spirits were not called in'ruq. In the Hooper Bay dialect, they are called "a'ner'neq"—literally, "breath"—and, as in animals, a human being could not live without its "breath." Death came when a'ner'neq left the body due to injury, illness, or by the will of the person. The human spirit was a very powerful spirit, and as other living creatures, it was able to be reborn when its name was given to a newborn. It was appeased and celebrated through the "Great Feast of the Dead," as Nelson called it.

Even so, animal and human spirits wandered the earth, as did monsters and creatures of the deep and the underground—good spirits and evil spirits ("a'lung'rut")—and these either helped or raised havoc, even death, for humans and animals alike. Every physical manifestation—be it plenty of food or famine, good weather or bad, good lunch or bad, health or illness—had a spiritual cause. That is why the Medicine man—the "a'ngat'gut"—was the most important man in the village.

The a'ngat'guk was the village historian, physician, judge, arbitrator, and interpreter of Yu'ya'raq. He also understood the spirit world. In fact, at times he entered into it to commune with the spirit beings in fulfilling his responsibility as intermediary between men and the spiritual realm. He is said to have gone to the moon, to the bottom of the sea, to the bowels of the earth in his search for understanding and solutions for problems which faced his people—problems like famine, bad weather, and illness.

In the old Yupiq world, the a'ngat'guk was a powerful and indispensable force because he represented, protected, and upheld Yu'ya'raq, even from the spiritual realm, of which he was a member, He was the guardian of a very ancient culture that had become brittle with age, a very fragile culture whose underpinnings the rest of the world would never understand—a culture that was about to crumble as a result of temporal forces from the one direction he wasn't looking—the physical world.

ILLNESS AND DISEASE

Not knowing of microbes, bacteria, or viruses, the old Yupiq attributed illnesses to the invasion of the body by evil spirits. They knew that certain plants and spoiled food caused death and strictly forbade eating them. But illnesses unattributed to the ingestion of poisons through the mouth were attributed to evil spirits. These illnesses were treated by the a'ngat'guk in his role as medicine man.

There were commonly known remedies for many ailments suffered by the Yupiq, like certain herbs, plants and even animal parts. They also had home remedies for small burns and cuts, sore backs, and sprains. The a'ngat'guk was not called in unless the illness was deemed to be serious and of an unknown nature, probably caused by an evil spirit and thus requiring a spiritual remedy.

The a'ngat'guk must have known that some ailments were, by nature, physical. His knowledge of human anatomy was probably as good as his Western counterparts. Some a'ngat'guk were even said to have performed surgeries, amputations, and autopsies. He had names for all major bones, muscles, arteries, veins, and organs. He knew roughly the function of each. But his remedies for unknown disease were different from his Western counterparts in that they used "bromides and elixers," while he used songs, dances, and chants.

The important thing to remember is that the old Yupiq believed that illnesses unattributed to the ingestion of poisons or injury were caused by the invasion of the body by evil spirits. With the arrival of Western man, the Yupiq (and Yu'ya'raq) would be accosted by diseases from which they would never recover. The old Yupiq culture, the spirit world, and its guardian, a'ngat'guk, were about to receive a fatal wound.

THE WORLD GOES UPSIDE DOWN

When the first white men arrived in the Yupiq villages, the people, upon meeting and hearing them, did not abandon their old ways. It is historical fact that they resisted Russian efforts to colonize them. They did not abandon their spirit world or their beliefs upon hearing the Christian message of the priests. That the missionaries met resistance is clear from the derogatory and antagonistic references they made about the a'ngat'guk in their diaries. They called them "rascals," "tricksters," even "agents of the devil."

The Yupiq saw the missionary as a curiosity, as he saw all white men. The Yupiq said of them, "Yun'ri'tut"—they are not human beings. Obviously, they were not impressed by the white men, even while they quickly adopted their technology and goods. But resistance to western rule would crumble, Yu'ya'raq would be abandoned, and the spirit world would be displaced by Christianity.

The change was brought about as a result of the introduction of diseases that had been born in the slums of Europe during the dark and middle ages, diseases carried by the traders, the whalers, and the missionaries. To these diseases, the Yupiq and other Native tribes had no immunity, and to these they would lose up to sixty per cent of their people. As a result of epidemics, the Yupiq world would go upside down—it would end.

This period of Yupiq history is vague. There is no oral or written record of their reaction to this experience, but we can and must attempt in our minds, to recreate what happened, because this cataclysm of mass death changed the persona, the lifeview, the world view, of the Yupiq people.

THE GREAT DEATH

As a child I heard references to "Yuut tu'qur'pat'rrat'ne"—when a great many died, or "The Great Death." I never understood when it happened, nor was I told in detail what it was, but that it was a time-mark for our Yupiq people, I understood, and I understood that it was caused by disease.

I heard references to it from three men, my grand-uncles, all of whom are now dead. Their white man-given names were Joe Seton, Frank Smart, and Sam Hill, but of course we did not call them that. To me they were my A'bug'juak, my Ub'be'yaq, and my A'nga'ga'laq. In almost every reference to the experience, they used the word "naq'lur'luq," or "poor," referring both to the dead and to the survivors, but they never went into detail, as if they had an aversion to it.

From looking at the various epidemics that decimated the Native people, I at first thought of them collectively as the "Great Death," but I am now convinced that the "Great Death" referred to the 1900 influenza epidemic that originated in Nome. From there it spread like a wildfire to all corners of Alaska, killing up to sixty per cent of the Eskimo and Athabascan people—those with the least exposure to the white man (details are reported by Robert Fortune in his book, *Chills and Fever).* This epidemic killed whole families and wiped out whole villages. It gave birth to a generation of orphans—our grandparents and great-grandparents.

The suffering, the despair, the heartbreak, the desperation, and confusion these survivors lived through is unimaginable. People watched helplessly as their mothers, fathers, brothers, and sisters grew ill, the efforts of the a'ngat'guk failing. First one family fell ill, then another, than another. The people grew desperate—the a'ngat'guk along with them. Then the death started, with people wailing morning, noon, and night. Soon whole families were dead, some leaving only a boy or girl. Babies tried to suckle on the breasts of dead mothers, soon to die themselves. Even the exhausted medicine men grew ill and died in despair with their people, and with them died a great part of Yu'ya'raq, the ancient spirit world of the Eskimo.

THE SURVIVORS

Whether the survivors knew or understood it, they had witnessed the fatal wounding of Yu'ya'raq and the old Yupiq culture. In the span of the life of a culture, it was instantaneous, shocking, traumatic—their world had gone upside down, literally overnight. It gave "birth" to a new generation of Yupiq people, a people born out of great suffering, confusion, desperation, heartbreak, and trauma. They were "born" into shock. They woke to a world in shambles, their people and all they believed in strewn around them, dead.

To them, disease was an evil spirit. In their minds they had been overcome by evil. Their medicines and medicine men had proven useless. Everything they had believed in had failed. Their ancient world had collapsed.

From their innocence, and from their inability to understand the nature of the disease and to dispel it, guilt was born into them. They had witnessed mass death—evil—in unimaginable and unacceptable terms. These are the men and women, orphaned by the sudden and traumatic death of a culture that had given them birth, who would become the first generation of the modern-day Yupiq.

THE NEW WORLD

The world the survivors woke to was without anchor. The a'ngat'guk, their medicines, their beliefs, had all passed away overnight. They woke up in shock, listless, confused, bewildered, heartbroken, and afraid. Like soldiers on an especially gruesome battlefield, they were "shell shocked."

Too weak to bury all the dead, many Yupiqs abandoned the old villages, some having caved in their houses with the dead still in them. Their homeland—the tundra, the Bering Sea coast, the riverbanks—had become a dying field for their people, their families, their leaders, their medicine men—for Yu'yu'raq—but it would not end there.

Famine, hunger, and disease resulting from the epidemic continued to plague them and still more would perish. These were the people whom the missionaries would call "wretched," "lazy," even "listless." Gone were the people whom Edward W. Nelson so admired for their "arts, ingenuity, perseverance, and virtuosity"; the people whom Henry B. Collins claimed had reached the "peak" of modern Eskimo art. Disease had wiped them out.

With this generation, the long night of suffering would begin for the survivors and their descendants.

THE NEW YUPIQ

The Yupiq living today is not the same as his forebearers, at least not culturally. The Yupiq living today is, however, linked to the old through the experience of the Great Death. One was wiped out by it, the other was born out of it and was shaped by it. It is from this context that we have to see the modern Yupiq Eskimo. It is only from this context that we can begin to understand him.

Like any victim or witness of evil, whether it be murder, suicide, rape, war, or mass death, the Yupiq survivor was in shock, in trauma. But unlike today's trauma victim, he received no physical or psychological help. He experienced the Great Death alone in the isolation of his tundra and riverine homeland. There was no Red Cross, no "relief effort" to help him. The survivor of the Great Death had to face it alone.

He was quiet and kept things to himself. He rarely showed his emotions, his sorrows, fears, heartbreak, anger, or grief. He kept these to himself. And being unable, even in his conscious mind, to relive the horror he had experienced, he did not talk about it with anyone.

The survivors seem to have agreed, without discussing it, that they would not talk about it. It was too painful and the implications were too great. Discussing it would have let loose emotions they may not have been able to control. It was better not to talk about it, to act as if it had never happened, to "na'llu'nguak." To this day na'llu'nguak remains a way of dealing with problems or unpleasant occurrences in Yupiq life. Young people are advised by elders to "na'llu'nguar'lu'guu"—to pretend it didn't happen.

They had a lot to pretend not to know. After all, it was not only their loved ones who had died, they had seen their world collapse—the thing they had lived and believed in was found wanting. They were afraid to admit that the things they had believed in might not have been true. (I once asked one of my mothers, Aldine Simon, who in English would be called my aunt, why the old people believed what they believed in. Her answer was: "Naq'llung, na'llu'rru'lull'qua'meng'rra"—Poor, because they didn't know any better.)

The new Yupiq was born into cultural rubble, physically and psychologically traumatized. He was born into a world no longer anchored. He was born adrift and lost. In this condition he walked out into the "new" world. It was this traumatized, demoralized, confused, afraid, and lost Yupiq who embraced Christianity overnight, who abandoned Yu'ya'raq, discarded his spirit world and his ceremonies, and buried his old culture in the silence of denial.

They were eager to be led, to follow, especially the white missionary or school teacher, who overnight attained a status once held only by the a'ngat'guk. Being leaderless, and having been brutalized by disease, trauma, and related illnesses, they had become "listless," if not willing, followers. They were content to have someone, anyone, lead them.

The survivors of the Great Death converted to Christianity wholesale and almost overnight. Having silently abandoned their own beliefs, they were reinforced in their decision not to talk about them by the missionary who told them their old beliefs were "evil," and from the "tun'rrak"—the devil.

In the future, they would sternly tell their grandchildren not to ask them questions about the a'ngat'guk, the old symbol of Yupiq spiritualism, as if they were ashamed of him and indirectly, of their old beliefs. They would become good Christians—humble, compliant, obedient, deferential, repentant, quiet.

They were fatalists. They were not sure about the future—even the next day. They told their children to be prepared always to die. They cautioned against making long-range plans. They were insecure. From their own experience they knew how fleeting life was, and from the missionary they knew how terrible the wrath of the Christian God could be. As new Christians, they learned about Hell, the place where the missionaries told them most of their ancestors probably went. They feared Hell. They understood fear, and they understood Hell.

They would, when they had children, give over their education and instruction to the missionary and the school teacher. They would teach them very little about Yu'ya'raq. They allowed the missionary and the school teacher to inflict physical punishment on their children; for example, washing their mouths out with soap, if their children spoke Yupiq in school or church. Their children were forbidden, on pain of "serving in Hell," from dancing or following the old ways. The parents—the survivors—allowed this. They did not protest. The children were thus led to believe that the ways of their fathers and forefathers were of no value, and were evil. The survivors allowed this.

The survivors taught almost nothing about the Old Culture to their children. It was as if they were ashamed of it, and this shame they passed on to their children by their silence and their allowing cultural atrocities to be committed against their children.

The survivors also gave up all governing powers of the village to the missionary and school teacher—whoever was most aggressive. There was no one to contest them. In some villages the priest had displaced the a'ngat'guk. In some villages there was theocracy under the benevolent dictatorship of a missionary.

The old guardian of Yu'ya'raq on the other hand, the a'ngat'guk, if he was still alive, had fallen into disgrace. He had become a source of shame to the village, not only because his medicine and Yu'ya'raq had "failed," but also because the missionary now openly accused him of being an agent of the devil himself, and of having led his people into disaster.

The survivors were very, very sad. In their heart of hearts they wept, but they did not talk about this to anyone, not even their fellow survivors. It hurt too much. They also felt very angry, bewildered, ashamed, and guilty, but all this they kept within themselves. These survivors are the forebearers of the Yupiq people and other Alaska Native tribes of today. Their experiences before, during, and after the Great Death explain in great part the persona of their children, grandchildren, and great-grandchildren who are alive today.

POST-TRAUMATIC STRESS SYNDROME: AN ILLNESS OF THE SOUL

In light of recent cases of Vietnam veterans who witnessed or participated in war-related events repugnant to them, and who have subsequently been diagnosed to suffer from a psychological illness called "post-traumatic stress syndrome," it is apparent to me that some of the survivors of the Great Death suffered from the same disorder.

The syndrome is born of the attempted psychological suppression of events perceived as repugnant or "evil" to the individual who has witnessed or participated in these events. These events were often traumatic to the individual because they involved violence, death, and mayhem by which he was repelled, and for which he felt guilt and shame. Not all veterans became infected by this illness. It was only the veteran who tried to suppress and ignore his experience and the resultant feelings of guilt and shame who became ill.

Post-traumatic stress syndrome in time cripples a person. The act of suppressing the traumatic event, instead of expunging it from the mind through "confession," serves instead to drive it further into the psyche, or soul, of the person, where it festers and begins to colour the life of the person. The person who suppresses that which is unbearable to his conscious mind is trying to "ignore" it, trying to "pretend" it isn't there. In time, unless he receives treatment, it will destroy him, just as any illness left untreated, will in time cripple and kill the body.

Because of his "guilt," the person suffering from PTSS does not like himself. He is ashamed of himself, ashamed of what he saw or participated in, and is haunted by the memory, even in sleep. He becomes withdrawn, hyper-vigilant, hyper-sensitive, and is constantly living in stress. Soon he is unable to speak truthfully with other people about himself or his feelings and becomes unable to carry on close interpersonal relationships. Living under a great deal of stress in his soul, he becomes less and less able to deal with even the minor difficulties of everyday life.

To such a person, escape from self becomes a necessity because, even in sleep, he finds no peace. He becomes a "runner," running from his memory, and from himself. He gets tired, begins to despair, and for him, in this day and age, alcohol and drugs become a readily available "escape" from the illness. These, for a time, are able to numb his mind and soul.

In time, without treatment, many veterans and other who suffer from PTSS become alcohol and drug abusers. Many become addicted, and as a result, lose friends, wives, families, and become isolated, exacerbating an already bad situation. Being unable to hold jobs, some become dependent on others for support. Some become "criminals," further isolating themselves, and further depressing an already depressed soul.

Tragically, under the influence of alcohol and drugs, the pent-up anger, guilt, shame, sorrow, frustration, and hopelessness is vented by outbursts of violence to self and others. Such acts, which are difficult for others and even for the sufferer to understand, drive him further into the deadly vortex of guilt and shame. Family and friends who knew him before he became ill, swear that he is not the same person, and that they do not know him anymore.

Post-traumatic stress syndrome is not a physical illness, but an infection of the soul—of the spirit. I use the word "infection" because the person suffering from PTSS did not volunteer to become ill and did not choose the life of unhappiness which results from it. I refer to PTSS as an infection "of the soul" because the disease attacks the core of the person—his spirit.

The disease is born out of evil or events perceived as evil by the person. And the nature of evil is such that it infects even the innocent, dirtying their minds and souls. Because it is infectious, it requires cleansing of the soul, through "confession." If the PTSS sufferer does not get help, he will in time destroy himself, leaving in his wake even more trauma and heartbreak.

PTSS IN THE SURVIVORS OF THE GREAT DEATH

Not all the survivors of the Great Death suffered from post-traumatic stress syndrome, but a great many did. This may explain the great thirst for liquor that whalers and other westerners found in the Eskimos along the Bering Sea and the Arctic. It was reported by whalers and the officer of the early revenue cutters that the Eskimos "craved" liquor, trading all they had for it and almost starving themselves as long as they had molasses with which to make rum.

Like the Vietnam veteran, or victims and witnesses of other violent and traumatic events, these Eskimos found in liquor a narcotic that numbed their troubled minds. The reports of the whalers, the revenue cutters, and other observers confirm that the Eskimos quickly became "addicted" to alcohol.

The only explanation for this type of behaviour is that for some reason these Eskimos were psychologically predisposed to seek "relief" through the narcotic effects of alcohol. And although in the case of the St Lawrence Islanders this behaviour was reported in the mid-nineteenth century, it must be remembered that they had already begun to see their world crumbling as a result of interaction with western sailors and diseases much earlier than the Yupiq, Inupiaq, and Athabascan people who were located farther away from established sea lanes. The St Lawrence story was only a precursor of the tragedy that would unfold on the mainland at the turn of the century.

Judging from the abrupt changes the Yupiq and other Native people accepted at the turn of the century, literally without a fight, one can assume that they were not "themselves." No people anywhere will voluntarily discard their culture, beliefs, customs, and traditions unless they are under a great deal of stress, physically, psychologically, or spiritually. Yet for some reason, the Yupiq people did exactly that, "overnight" in the span of their cultural history. There may have been pockets of resistance, but they were insignificant.

With the Yupiq people and most Alaska Native tribes, the case can be made that resistance collapsed because of mass death, the result of famine and illness, and the trauma that accompanied these. The case can also be made that the survivors of the Great Death suffered from post-traumatic stress syndrome, and that it was in this condition that they "surrendered," and allowed their old cultures to pass away.

The survivors had been beaten by an unseen great evil (mass death), which had been unleashed in their villages, killing over half the people—men, women, and little children. They had witnessed the violent collapse of their world, of Yu'ya'raq.

Having barely escaped the grip of Death, the survivors were shaken to the core of their being. They staggered, dazed, confused, brutalized and scarred, into the "new" world, refugees in their own land, a remnant of an ancient and proud people. The world looked the same, yet everything had changed. But the memories would remain; memories of the spirit world, the way life used to be, and memories of the horrors they had witnessed and lived through.

We who are alive today cannot begin to imagine the fear, the horror, the confusion, and the desperation that gripped the villages of our forebearers following the Great Death. But we have learned through the experience of the Vietnam veterans infected by the evil of PTSS, that the cries of horror and despair do not end unless they are expunged from the soul.

Yes, the Yupiq survivors cried, they wailed, and they fought with all they had, but they were not heard. They had been alone in a collapsed and dying world and many of them carried the memory, the heartbreak, the guilt and the shame, silently with them into the grave.

But we hear them today. They cry in the hearts of their children, their grandchildren, and great-grandchildren. They cry in the hearts of the children who have inherited the symptoms of their disease of silent despairing loneliness, heartbreak, confusion, and guilt. And tragically, the children, not knowing why they feel this way, blame themselves for this legacy from their grandparents, the survivors of the Great Death who suffered from what we now call post-traumatic stress syndrome.

THE NEW NATIVES: CHILDREN AND GRANDCHILDREN OF THE SURVIVORS

At the time of the Great Death, there were white men in some of the villages, mostly missionaries and traders, but they were few in number. They witnessed the Great Death, and in many cases they did the best they could to help the Native people. Yet it would be these same men who would take advantage of the demoralized condition of the survivors to change them, to "civilize" them, to attempt to "remake" them. They, and the men and women who would follow them, had no understanding of or respect for the old cultures. They considered them satanic, and made it their mission from God to wipe them out. They considered the survivors savages and used derogatory adjectives in describing them in their letters and diaries. And because of what they had just lived through, and because of their disoriented and weakened condition, the survivors allowed these newcomers to take over their lives.

What followed was an attempt at cultural genocide. The priests and missionary impressed on the survivors that their spirit world was of the devil and was evil. They heaped scorn on the medicine man and told the people he was the servant of the devil. They told the survivors that their feasts, songs, dances, and masks were evil and had to be abandoned on pain of condemnation and hell fire. Many villages followed these edicts. The dances and feasts disappeared.

The priest and missionary forbade parents from teaching their children abut Yu'ya'raq and about the spirit world. They forbade the parents and children alike from practising old customs and rituals based on Yu'ya'raq, calling them "taboos." Again, the survivors obeyed and their children grew up ignorant about themselves and about their history. If the children asked about the Old Culture, they were told by their parents not to ask such questions, as if they were ashamed or hiding something. From listening to the priest and observing the behaviour of their parents, the children would come to believe that there was something wrong with their people—some dark secret to be ashamed of.

In the schoolhouse, the children were forbidden to speak in Yupiq. The survivors did not protest even when it was learned that the school teachers washed the mouths of their children with soap for speaking their mother tongue. In the schoolhouse the children came to believe that to be Yupiq was shameful and that to become like white people was not only desirable but essential. The children began to look down at their own people and began to see the observances of their people as quaint, shameful, and funny.

That the survivors allowed all this is testimony to the degree of their individual and collective depression, especially in regard to the treatment of their children. Had Edward William Nelson made similar decrees during the time he was visiting these same villages (1870–1875) he would have been killed. Yet, after the Great Death, some villages were ruled autocratically by a single priest.

The survivors were stoic and seemed able to live under the most miserable and unbearable of conditions. They were quiet, even deferential. They did not discuss personal problems with others. If they were hurt, they kept it to themselves. If they were angry, they kept it to themselves. They were lauded as being so respectful that they avoided eye-to-eye contact with others. They were passive—very few exhibited their emotions or discussed them.

The survivors did as they were told. They were not fighters or protesters. They almost lost everything—their cultures, languages, spiritual beliefs, songs, dances, feasts, lands, their independence, pride, all their inheritances. This was their way of "coping" with life after the cataclysm of the Great Death. The survivors had gone into themselves, and receded with their tattered lives and unbearable emotions into a deep silence. It was in this condition that they raised their children, who then learned to be like their parents—passive, silent, not expressing emotions, keeping things to themselves, and not asking too many questions.

As stated, the survivors did not teach their children about Yu'ya'raq, the spirit world, or the old culture because it was too painful to do so. Besides, the priest said it was wrong. When parents spoke to their children it was to lay down do's and don'ts. Those who told stories told only the "harmless."

The survivors told their children about kindness, forgiveness, and sharing, yet they were unwilling to face and discuss the problems and unpleasantness in the family or the village. This would become part of the persona of the New Native. The survivors did not tell their children about the Great Death or explain what happened to their people—it was too painful to do so. Without meaning to, the survivors drove the experience of the Great Death and the resultant trauma and emotions deep into their souls. They became psychologically and emotionally handicapped by this, and they passed these symptoms on to their children and grandchildren.

The survivors' children are the grandparents of the present day Eskimo, Indian, and Aleut. It is these traits, these symptoms of post-traumatic stress syndrome that are handicapping the present generation of Alaska Native people. Several generations of suppressed emotions, confusion, and feelings of inferiority and powerlessness now permeate even the very young.

AN ANOMALY

There is an anomaly. Since the early 1960s, the Native people have seen their material lives improve. They are no longer hungry, they are well clothed and they now live in comparatively warm, comfortable homes. This has largely been achieved by the anti-poverty programs which were instituted in the years before and after the Great Society. Being by-and-large unemployed in the cash economy, Native people have benefitted greatly by the civil rights and anti-poverty programs of the 1960s and 1970s.

Yet, as their physical lives have improved, the quality of their lives has deteriorated. Since the 1960s there has been a dramatic rise in alcohol abuse, alcoholism, and associated violent behaviours, which have upset family and village life and have resulted in physical and psychological injury, death, and imprisonment—as though something had "loosened" within the Alaska Native people—something self-destructive, violent, frustrated, angry. And it is the young who are dying, going to prison, and maiming themselves. Their families, their friends, their villages say they cannot understand why. Every suicide leaves a shocked, stunned family and village. Every violent crime and every alcohol-related death, elicits the same reaction. no one seems to know why. It has now become an epidemic, this alcohol-related nightmare. One thing we do know—it is not due to any physical deprivations. Native people have never had it so good, in terms of food, clothing, and shelter.

We can also state that it isn't because the federal and state governments have ignored us. Hundreds of millions of dollars have been spent on Alaska Natives to improve their lives, health, and education. Hundreds of millions have been spent just trying to combat alcoholism and alcohol abuse. Laws have been passed—"local option" laws prohibiting the importation, the sale and even the possession of alcohol. Yet the carnage goes on.

The numbers are shocking—the number of suicides, homicides, accidental deaths, dismemberments, domestic violence incidents, imprisonments, fetal alcohol children, deaths by disease attributed to alcohol abuse, etc. Yet these numbers are misleading because they do not measure the damage being done to the Native people. The numbers cannot quantify heartbreak, discouragement, confusion, hopelessness, grief. The numbers cannot measure the trauma. It is like repeating the Great Death all over again, and just as then, the Alaska Natives blame themselves and do not know or understand why. And like the first Great Death, a whole generation of Alaska Natives is being born into trauma, just like their grandfathers and fathers. It is history repeating itself in a very tragic and heartbreaking way. It is a deadly cycle which began in the changing of the times for the Yupiq and the other tribes of Alaska Natives.

WHY?

The cry of the survivors of the Great Death was "Why?" That same cry is now heard among the confused, shocked, and heartbroken spirit of today's Alaska Native people. It is a question that needs to be answered.

We now know that our ancestors were besieged by ship-borne diseases like smallpox, measles, chicken pox, colds, culminating in the Great Death —the influenza epidemic at the turn of the century. Not knowing of microbes they attributed these diseases to evil spirits and to their own weaknesses. They blamed themselves and their way of life, and abandoned themselves and their way of life as a result. But this was not the end of the suffering. Famine, poverty, confusion, polio, tuberculosis, and spiritual depression followed, ending in the death of the old cultures around the 1950s.

The present epidemic is a little harder to explain, but for certain it is born out of the great Death itself, and the disease is one of the soul and the psyche of this present generation of Alaska Native people. It is an inherited disease, passed on from father to son. But it was passed down unintentionally, unknowingly, innocently. Nevertheless, it is deadly and, unless treated, will give birth to another generation of infected souls.

A GENERATION TURNS ON ITSELF

Today's generation of Alaska Native people are a generation that have turned on themselves. They blame themselves for being "unemployed," for being second-class citizens, for not being "successful" as success is portrayed to them by the world they live in. They measure themselves by the standards of television America and textbook America, and they have "failed." For this, they blame themselves. There is no one to tell them that they are not to blame, that there is nothing "wrong" with them, that they are loved. Sometimes they don't even know who they are, or what they are.

This of course does not describe *all* young Alaska Native people. But it describes the suicides, the alcohol abusers, those in prison, the ones with "nothing to do" in the villages. These are the numbers we hear in reports. They are living human beings—Eskimos, Indians, and Aleuts. We pay no attention to them until they become a number. Chances are good that their parents were alcohol abusers, if not alcoholics. Chances are good they saw violence in the home—physical, verbal, psychological. Chances are good that they were "ignored," not paid attention to. Chances are that they were disappointed as children, emotionally hurt, heartbroken. Chances are they thought themselves unloved, unwanted. Chances are they knew hunger, were dirty, rested little, and did not do well in school. Chances are that they were disappointed by their parents—maybe they loved them, but were not loved in return. Chances are they yearned for happiness and a normal home but were denied it. Chances are they no longer communicate with others—not their parents, not their relatives, not their friends, with no one.

By the time they are grown, they are deeply depressed in their souls. By the time they are grown, they have become demoralized, discouraged, and do not think very much of themselves. Deep in their hearts they are hurt, angry, frustrated, and confused children. They never talk, they have turned inward.

These are the ones who when they drink alcohol quickly become addicted to it, psychologically first, physically second. And soon under the influence will begin to vent their anger, hurt, frustration, and confusion, seemingly out of the clear blue sky. And sadly, it is directed at themselves and those closest to them—their parents, their brothers, their friends, members of their villages. And the most tragic events are those with a "blacked-out" male Eskimo, Indian, or Aleut, who, while completely out of control, vents these deadly emotions in violence and mad acts resulting in dismemberment and death, leaving even more traumatized victims and witnesses.

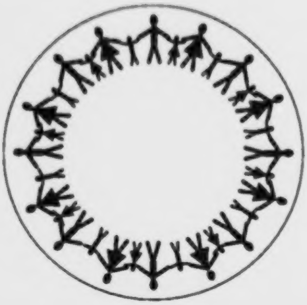
So what caused this? Is it the young man's or young woman's fault? Or is it his or her parents' fault, themselves abusers and alcoholics? Or is it the grandparents' fault who somehow did not raise their children right because they themselves were traumatized by the Great Death and later felt guilt for this—and the subsequent loss of culture, language, and independence? Whose fault is it?

Certainly, the dead will be buried, the suicides buried, the assaulter and abuser jailed and charged with the appropriate crime and put away in prison for a few years or a lifetime. But there are only so many prison cells. We can't really be seriously thinking of putting everyone into prison, can we? And the victims, the other victims of the Great Death, do we keep burying them till not one is left? Or is this to be our way of life till the end, burying the victims of victims?

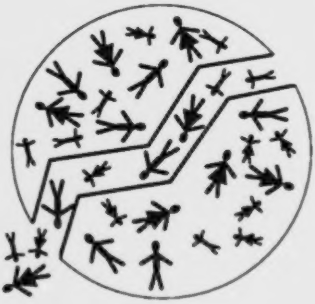
When will all this end? How will it end? How can we end it? When can we end it? Or do we even want to end it? Have we become so callous, so hard-hearted, our spiritual senses so dulled, that we are no longer moved by all this? Is it to be as Darwin put it, the survival of the fittest?

My answer at least is this. That we, who are indeed survivors of the Great Death, must end it. That we must put all our energies and resources to end it. And we must do it soon, because as time goes by, it will become harder and harder.

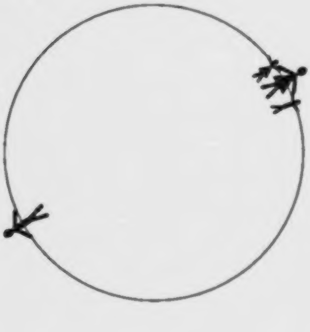
Every human life is sacred. Every Yupiq, Inupiaq, Athabascan, Aleut, Eyak, Chugiak, Tlingit, Haida, Koniag, Tshimsian life is sacred. We are not so many that we can endlessly absorb the trauma each tragic death inflicts on our physical and psychic body. We are much too few. The question is how.



- A healthy village is a circle whose people are safe within its fold.
- Love, understanding, kindness, the culture, the history, the goals, truth. These make the circle strong, and protect the village, the family, the individual.
- It is a gift of the creator to his children.



- For many Alaska Natives the circle was broken by the trauma of mass death through epidemics. The circle was broken. Families and village lost communication and grew apart.
- A cicle broken is incomplete. It hemorrhages, and life flows out of it. It breeds unhappiness. Unless the circle is repaired in time it will die.



- The circle can only be made whole again by those who live in it, its people.
- The circle being spirit, can only be repaired by love, understanding, kindness, forgiveness, patience with the help of the creator who established the circle. It can only be done by its people coming together in truth.

BEGINNINGS

If we were to look at the experience of the various tribes as the experience of individuals, and they were exhibiting the symptoms we have described, and which are now so well-documented, we would have to spend some time just talking to them—have them truthfully tell their life stories, leaving nothing out, to see what was causing these disturbances in their lives. So it is in this way that we must begin to treat this particular syndrome of the various Alaska Native villages, in fact beginning at the personal and familial levels.

The living elders must tell all they know, tell their experiences, because theirs are the experiences of the whole village, whether the whole village is aware of them or not. The very oldest are the most important because they will be able to tell their remembrances to the whole village. They must relate the old beliefs of their people, no matter the subject. They must also relate the experiences of the epidemics, no matter how painful, because these haunt not only them, but their children and grandchildren as well. They must tell why they gave everything up, why they discarded the old ways, the old beliefs, why they allowed the culture to die. They must explain how and why they gave up to others governing themselves, why they allowed the school teacher to wash their children's mouths with soap, why they gave up so much land.

The elders must speak of all that hurts them and haunts them. They owe this to their children, and to their children, because without knowing "why," they feel the same as the elders do.

The only fear I have is that the true survivors of the Great Death are now all gone—the ones who saw and lived in the old world, were nurtured by it, and who loved it. These are the ones in whom the disease that afflicts the Alaska Natives today was born. These are the ones who felt the full brunt of the fatal wounding of their world. They are the ones who saw it, were horrified by it, and whose hearts were broken. Hearing them, we will recognize the emotions in our hearts, emotions we have long attributed to a weakness within ourselves. We would at least mourn with them, mourn together the passing of our old world. Then they, and we, would not be alone any more.

The children of these survivors must also speak. They are now grandfathers—even great-grandfathers. They must speak of their childhoods, their world, what they saw, what they perceived, what they thought, how they felt. They too must share with us their life stories, leaving nothing out, the good and the bad, because their experiences are ours, and we are their seed. We also love them.

Then the parents of this new generation must speak together, as a group, to the rest of the villages. They too must relate their life stories, their experiences, their sorrows. They must turn their hearts to their children who so love them, who so long to know them. Their experiences are ours. We are shaped by them.

Then we their children must speak, to our parents and grandparents if we have them and to our own children. We too must tell our story to our people, because our experience is theirs too. We must tell our feelings to, our anger, our frustrations, and ask questions of our fathers.

You know why we must do this? Because we don't know each other any more, we have become like strangers to each other. The old do not know or understand the young, and the young do not know or understand the old. Parents do not know their children, and the children do not know their parents.

As a result of this silence, a gulf has grown between those who love and care for each other the most. It is so very sad. I have been in homes where members of the same household do not even speak to each other. I wondered how they could even stand to be in the same house together like this.

And out of this will grow more hurt, misunderstanding, and unfulfilled love. Even in the family, while surrounded by those one loves the most, a person can become very lonely, isolated, alone—a stranger even to those who love him, to those closest to him. And needless to say there will be tension, stress, and very frayed nerves.

Only communication, honest communication, from the heart, and truthful, will break this down, because the inability to share one's heart and feelings is the most deadly legacy of the Great Death. It was born out of the survivors' inability to face and speak about what they had seen and lived through. The memory was too painful, the reality too hard, the results too hard to hear.

Without knowing it, the survivors began to deal with life and the difficulties of life this way, by trying to ignore them, by denying them, by not talking about them. And this is the way they raised their children, and their children raised us the same way. It has become a trait among our families, our people, holding things in. The results have been tragic.

Over the many years of suppressed emotions, of not communicating from the heart, the Native people, the Native families grew apart. It has become a powder keg. Somewhere along the line, something had to give. The body of the Alaska Native family, village, and tribe, being unable to withstand the stresses built up from within, began breaking down.

Since the latter 1960s, we have seen the breakdown. Alcohol abuse has become rampant. Violence in the home and village directed at others and at the self has erupted. The intensity, and the level of self-destruction of the Alaska Native, is shocking. It is appalling. The only way it will end is if the built-up stresses, misunderstandings, and questions are released and satisfied by truthful dialogue from the heart. It is only through this heart-to-heart dialogue, no matter how painful or embarrassing the subject, that the deadly stresses born of trauma on trauma, can be released. Then, slowly we can all go home again, be alone and lonesome no more, be a family and a village again.

It is time we bury the old culture, mourn those who died with it, mourn with those who survived it. It is time we buried our many dead who have died in this long night of our suffering, then go forward, lost no more. Because you see, we have been wandering in a daze for the last 100 years, rocked by a succession of traumatic changes and inundations. We have to stop, look at ourselves, and as the "New Alaskan Natives" we are, can press on together, not alone—freed of the past that haunted and disabled us, freed of the ghosts that haunted our hearts. Free to become what we were intended to be by he who created us.

FIRST STEPS

On the road to health, to freedoms long lost, several first steps should be taken. First on the village level, those whose hearts are with their people, should institute "Talking Circles,"—a place and a time where elders, parents, and the young can come together to share themselves, a place where truth can be spoken about all things communal, familial, and personal.

The circle would not be a place for debate or argument, but a place to share oneself and one's experiences, feelings, and thoughts with the rest of the village. Patience and a love for one another is a requirements for a circle. But once it begins to roll, it will grow and strengthen those within it. It is not only a place to get things off one's chest, but a place to re-establish bonds between family members and the rest of the village.

If the circle goes right, some mothers will see their sons for the first time, some sons see their fathers for the first time, and they will love them even as understanding grows.

The circle has to be open to all members of the village. No one should ever be excluded. In fact everyone must be not only invited, but welcomed and openly received by the circle. If all goes well, the bonds between family members and village members will grow. Hopefully, it will enable all members of the village family to "go home" again. The chasm of suffering and pain that the Great Death brought to our people will close. If this should happen then all the suffering and those who gave their lives in this long night would not have been in vain.

Another first step is the establishment of "Talking Circles" for members of the village who have become addicted to alcohol and other drugs. Like the circle for the village in general, this circle would help the alcoholics understand better why they became addicted and, with the help of recovering addicts, get on the road to recovery and health. To this circle should come elders, parents, and friends who love them—to hear them, to see them, to reassure them, to receive them.

In addition to the circles, the village council should sponsor, on a regular basis, activities for the whole village that require no money but would serve to entertain and allow the families to come together as one big family, which the village is. These activities may be weekly potlucks with singing and dancing, even dancing classes for the bigger feasts. The village council should also reinstitute the various potlatches where the whole village can come together to celebrate their lives and the gifts they have received from their Creator.

There are a lot of things the village councils and their people can do for one another to help themselves, to bring themselves together. Even the young women could give all the mothers a night or day off by taking care of the children for one day or night so the mothers can come together as a group.

There is no end to the good people in the villages can do for one another, no end to the kindnesses and small considerations they can give to each other. The important first step is for the families and the village to come together as a family, because they are a family. Their health and happiness depends on each other.

ON PUBLIC POLICIES

The United States Congress recently enacted legislation creating a commission to study just the problem we have been discussing. And certainly these are things the Congress can do to help Native people on their road to recovery. It is a mistake, however, to think that Congress or any other group can bring the Alaska Native people back to health. Money, programs, or loans, no matter how well intentioned, cannot end the unhappiness, dissatisfaction, anger, frustration, and sorrow that is now leading so many Alaska Natives to alcohol abuse, alcoholism, and tragedy. Only the Alaska Native can do this. To look elsewhere for solutions is illusory and will only end in more alienation, suffering, tragedy.

Congress, however, can take some concrete steps to assist the Native villages in re-establishing themselves. First, Congress can affirm, by law, what is now reality—that Alaska Native people are legally "Indians," and as such fall under the special protections of the US *Constitution* and Federal Indian Law. Congress can re-affirm the Alaska Native's inherent right to establish tribal courts and ordinances and power to enforce these.

Congress can re-affirm the rights of Alaska Native people in the villages to hunt and fish for subsistence and also to give them priority rights to the economic use of these fish and games resources so their dependence on federal welfare programs may decrease and, in time, disappear. It makes no sense at all that presently many Native people are unable to hunt and fish on their lands and waters for commercial purposes while others, even foreigners, are allowed to do so—this in an economically depressed village where there is eighty per cent unemployment and where ninety per cent of the families are on various welfare programs.

Congress can, and should, also set aside funds from oil lease and royalty funds from lands and waters adjacent to the villages. These funds would be used as scholarships for Alaska Native children studying at universities world-wide. As it is now, the benefits received by Alaska Natives come in the form of welfare payments and other grants-for-the-needy programs for which they are eligible.

Congress should also establish several correctional facilities for Alaska Native offenders, to be run by Alaska Natives themselves. This would be in recognition of the fact—the established fact—that the village offender is not the same as the black or white offender, and that his rehabilitation can only be brought about through culturally relevant programs. Congress should also appropriate funds for the establishment of several substance abuse centres conceived, established, and run by Alaska Natives themselves. As with the correctional facilities, these should also have a life span of twenty years, to be closed at the end of that period.

Yes, the Congress of the United States can help the Native people on their road to recovery from the various traumas they have lived through in the past 100 years. But that help cannot come in the form of more welfare programs or programs conceived anywhere else but in the village by Natives themselves. The Congress of the United States is supposed to be the protector of Alaska's Native people, but for the past 100 years they have neglected them, failed to protect them, and instead have become a party to elements that would completely disenfranchise them as a people.

Alaska Natives have suffered much and lost much, but they have managed to survive. It is almost a miracle they have survived. They have blamed themselves for the suffering and losses, but they are innocent.

Yes, the Congress and the American people can help the Eskimos, Indians, and Aleuts to become free, self-supporting Americans, but they must realize that Native people can only do this in their own way, as Eskimos, Indians, and Aleuts. To continue to "assimilate" them, to continue to keep them as pets unable to care for themselves, to continue to attempt to remake them into anything else but what they are, is to slowly kill them—to commit cultural genocide.

As for the state of Alaska, it must realize that the Native people are not its enemies, seeking to undermine it. They are in fact its first citizens. The state must realize, must accept, constitutionally by amendment, the existence of Eskimos, Indians, and Aleuts, whose needs are not the same as immigrants from North Carolina, Texas, Korea, Germany, and almost every country in the world. Indeed thousands have come to Alaska and are enriched by this land. They get jobs, property, even become men of high position in government, when they had come with nothing. So, they have been given much by this land, and they have taken much. But sometimes it seems as if they are not thankful, but want even more, even that which belongs to others.

Alaska Natives are no threat to the state. Alaska Natives are no threat to the resources of the state, because to this day they have managed to conserve the natural resources of this land and have never gone to war against the immigrants who have settled here. Instead, they have received them with open arms. But sadly, these same people who came up here with nothing, have come to view the Alaska Native as a threat, as even wanting to "take" what they now consider to be "theirs." Even the Korean on the Kenai River rues the thought of the Kenaitze Indians subsistence fishing for salmon which he now views as "his." He calls them lazy bums wanting something for "free."

It is sad, the relations between the state and the first citizens, who have given it all up so they can exist together. Certainly this can change. The state too can help its first citizens back to health.

THE ALASKA FEDERATION OF NATIVES

As to the Alaska Federation of Natives, which was established to halt the loss of land to federal, state, and private parties, and to acquire title to lands owned by their people on the basis of aboriginal land rights, they too must now turn to seeking redress for the other equally important inheritances of their people, inheritances that have been lost—the basis for holding them slowly eroded by the law and adverse decisions by various federal and state courts.

The AFN must realize that their people have given up all they can give up—that there is nothing left with which to give in reaching compromises. The Federation must halt any further erosion of the inherited right of their village peoples. In fact, they must begin again to seek redress and the reinstatement of rights already lost.

Specifically, the AFN must return to Congress, not to amend the land settlement it successfully fought for, but rather to settle the other equally important claims of their people:

1. The right to self-government.
2. The right to establish ordinances.
3. The right to enforce ordinances.
4. The right to establish courts.
5. The right to hunt and fish for subsistence without interference by state law.
6. The right to use subsistence resources like salmon and other game on their lands and waters for commercial purposes so as to end economic dependence on state and federal welfare programs.
7. The right to tax exemptions on their properties and holdings —exemptions now enjoyed by other Native peoples of this country.

These rights are inherent to Alaska's Native people and they were never given up voluntarily by them. In fact, if they were taken away—they were taken away without their knowledge and without their approval. And, if this is in the fact the case, which it is, then they were stolen from them. The tribes, which together comprise the Federation, for the good of their people, for their very survival, must now turn in earnest to recover their rights. They must do this now while the elders are still with us.

To argue their case for redress they do not need lawyers. Their case is simple and compelling. They would not be asking for more money or more programs. Neither would they be asking for something which they did not need, or something that someone else could give them or do for them. Nor would they be asking for something "new," making an unreasonable demand. They would only be asking to *be* themselves again, to run their own lives again, to pick up the struggle for life again.

Since the turn of the century, they have been ruled by others, trustingly, patiently, quietly. Because of the trauma of disease and the collapse of their world, they have quietly allowed this to happen. And this may have been good, that there had been someone there to help them, to replace the system that collapsed around them. But this has gone on too long—it is time the survivors of that Old World now pick up the struggle for life again. The system they are living in now is killing them, the way they are living now is killing them further, depressing an already depressed soul.

Alaska Native villages and their people are indeed depressed. Not only are they suffering spiritually as a result of seemingly forgotten assaults to their psyche, but this psychological depression is exacerbated by their almost total dependence on "handouts" from federal and state governments. From birth to death, an Alaska Native is "cared" for by government. He is even buried in a casket paid for by the government. He holds a high school diploma but is "unemployed." His family, living on government dole, does not "need" him for support. So he feels useless and has "nothing" to do.

This almost total dependence on others is further undermining the already depressed spirit of the Native people living in the villages. And the only way it can end is if these same people are given back their responsibilities of self-government, etc. But not only that, they must also be given back the responsibility of feeding, clothing, and housing their people. Only then can they pick up once again the struggles of life.

This opportunity to pick up the struggles of life is what the AFN and its member villages must fight for. To some, the seven rights they have to regain mean "sovereignty." To the Alaska Natives in the village, they mean life, *real* life, with hard work, sweat, and no time to feel sorry for themselves.

No, those Native villages and people who seek to regain the seven "rights" are not asking for something new, something they never held before. They seek the opportunity to live, not only the way their forebearers lived, but they seek to regain responsibilities now held by federal and state governments—responsibilities that belong to them. They want to be normal again. The way they are living now is abnormal, the life of a caged animal. They are fed, housed, watered, "cared" for, but they are not free, and it is killing them.

This is what the Alaska Federation of Natives can and should do. The time of giving up things is over. There is nothing left to give away. There is nothing left with which to negotiate. The AFN and its village people are against a wall. There is no more room for retreat. If they wish to help their village people back to health, they have to finish the job that only started with the Alaskan Native Claims Settlement Act. They must secure the basic seven rights—rights *basic* to the continued survival of the Alaska Native people, rights basic to their souls as Alaska Native people, rights that mass death through disease and trauma had taken from them.

Alaska Native people are now once again ready to re-assume these rights and responsibilities—rights and responsibilities without which they will cease to exist as a people. It is a matter of survival, not semantics or politics. For us it has become a matter of life, or continuing tragic, traumatic death.

CLOSING

I do not know if anyone will understand or agree with what I have just written. Nor do I know, if it is understood, that the recommendations will be followed. But I am convinced that what I have written is the truth and will be supported by facts.

What I have written is the summary of five years' mental work, sometimes frustrating and anguishing work, but work nonetheless. It did not come to me in one flash, rather it came in bits and pieces. But finally the pieces fit, so I wrote them down for others to read.

Certainly there are others more qualified and much more respectable than me who could probably compose a more perfect letter. But this letter is from the heart and is born out of my own great suffering and imprisonment. In suffering and imprisonment, I have found, life becomes starkly clearer, shed of the noise and the static world. Yet I did not withdraw from the only world I have ever known, the world of my childhood and the world in which I struggled mightily with seemingly insignificant results.

No, while I might have been five years in prison, I have never left my village, nor my own Yupiq people. In fact, I return to them in spirit. While missing out on the seemingly "good" aspects of the life of my village and people, I certainly have not been spared their sorrows and their own suffering. These I have shared with them fully, sorrowing with them, seeking all the harder in our collective soul for answers.

At times I have felt like giving up, so discouraged have I become. Sometimes, things look hopeless. But as did the Apostle Paul, I have been learning to be "content" in whatever "state" I am in. I have been learning how to "abound" and how to be "abased," and much, much more. I have become freed of those things that brought me to alcohol abuse and alcoholism, the same things that now bring so many of my brothers and sisters to the same. So now, when I see them, their suffering, their unhappiness, I see my old self and try all the harder to lead them to the truth—the truth that freed me even as I sat in this prison—the same truth that can free all Native people who have become prisoners of the unhappiness born of the evil of the great Death and the subsequent trauma which it fathered.

This little that I have written is part of that truth, the truth that was hidden from me by my previous life, by my own stubbornness, pride, unvented emotions, and my addiction to alcohol, which momentarily eased the suffering these bring.

So this letter is not from a wise man, because were I wise unto myself I would not be where I am. Nor is it from a smart man, because were I a smart man I would not be where I am. No, this letter is from a man who could have learned only from great suffering, the lessons literally beat into his soul. But for this I am grateful, that even now I have finally seen what was before my very eyes from the time I was a child. So I share what I have learned, been taught, with you, in hopes that the tragedy which engulfed my life and those of my family and villages may never happen again.

I will close by saying that I, once the most hopeless of men, no longer am without hope. I now live in hope. I also have faith that he who started this good work in us by his creating us, will complete it.

2

SELF-GOVERNMENT

RESOURCE PERSON

Rosalee Tizya, United Native Nations, Vancouver

Rosalee Tizya provides an account of the use of the term "self-government" by aboriginal peoples in Canada by reviewing the history, philosophy, and developing relations between the First Nations and England and Canada.

INTRODUCTION

"Self-government" as an aboriginal "concept" cannot exist by itself, but goes hand-in-hand with aboriginal title and rights. When tied to Canadian/European ideas of governing, self-government then loses its "aboriginal/Indian" meaning. For Canadians to understand our use of the term, it is then necessary for them to understand aboriginal title and rights, according to our value system.

To develop this understanding, the following paper has been prepared as a working document and reference when explaining self-government based on our traditional value system.

It is important for people to understand the proper usage of terms such as "Indian," "aboriginal," and other English phrases. Most are unaware of the fact of the existence of "Nations." We are not "Indians" nor are we "aborigines." Numerous distinct "Nations" exist and have been in existence for tens of thousands of years. All have their own languages, governing systems, traditions, social order, and relations with other Nations. Each has their own word, in their language, for the race of people known today as "Indians." This is important if the rest of this information is going to have significance.

The other important fact is that these "Nations" spread from the northernmost tip of North America to the southernmost tip of South America, and include other Nations living on islands in the South Pacific and in the Caribbean. In total, we are talking about some 77 million "Indian" people in the world, most of whom occupy both North and South America. Expanding on this reality, we then move to the "Indian" reality in Canada and begin to explain the origins of our Nations, philosophy, and systems.

In spite of the fact numerous "Indian" Nations exist, there is a philosophy that is generally shared by all. This is not a "democratic," "socialist," "capitalist," or "communist" philosophy in nature, but can be regarded as an "Indian" philosophy since every Indian Nation shared these basic values, not the least of which are the Indian Nations in what is now called Canada. The following is presented only in general modern terms not specific to any Nation.

THE IMPORTANCE OF PHILOSOPHY

The purpose of presenting this information in general terms is to maintain respect for our Nations by not infringing on any one of their systems for passing on this information, nor violating the sacredness of how their history is passed down through the generations. How the information is presented here is through study of the values general to our Nations and seen as consistent throughout history, without singling out any specific Nations and exploiting its systems.

This general information was gathered mainly through the evidence of the Indian Nations in Canada presented to the Parliamentary Sub-Committee on Indian Self-Government, which travelled and heard evidence nationwide throughout 1982–1983. In some 3,000 pages of testimony, all traditional evidence was reviewed and extracted as presented without any changes made to the testimony. As the evidence was collated from across Canada, many of the accounts expressed the same values as the basis of their governing systems. Further research into other "Indian" Nations in the United States, Central and South America, and the South Pacific showed similar philosophical bases.

This similarity in beliefs, philosophy, developing relations with other Nations, and sociopolitical systems has been known for some time with the formation of the World Council of Indigenous Peoples in 1975. Throughout its existence, the indigenous peoples of some forty-seven countries began to realize the similarity of their cultural exchanges and political goals. With the examination of evidence from First Nations in Canada, we are able to put some specifics to our overall philosophy.

Developing a personal as well as a public awareness that there is a distinct difference in approach to life by "Indian" Nations and "non-Indian" Nations helps to clarify in people's minds that two paths exist that are not working in harmony. Personal awareness helps to strengthen the individual's belief in him/herself and strengthens "Indian" identities positively as a reality that cannot and should not be ignored if social/economic/political/individual/legal rights and freedoms are to have any meaning. We must also begin with the philosophical basis, because it is upon the base of philosophy that Nations developed their systems for living, governing, and social organization. Once we understand, in reality, two different approaches now exist, we begin the process of bridging the other gaps.

THE ROOTS OF OUR NATIONS

To outline "Indian" philosophy, the simplest approach is to begin with the most basic elements and build from there. In our "Indian" philosophy, we start from no other place than the Creator. The total lifestyle and society of Indian Nations is and was developed around the Creator based on an understanding and obligation.

To give an overall view, there are four main elements basic to Indian philosophy, which can be described as follow:

CREATOR

— Obligation —		— Protection —	
Land	People	Laws	Spiritual
"Great Island"	Nations and/or tribes	rights and responsibilities	language, tradition, and culture

From the Creator, the land that is now called North America was called the "Great Island." The people are Nations and/or tribes who were placed in their territories to care for and control the land. In return, the land would provide for all our needs. This relationship between the land, people, and our Creator is inseparable. Our responsibility to care for and control the land is seen as an obligation to our Creator and each generation must consider seven generations into the future. The land belongs to the Creator: we belong to the land. This relationship is the basis of our position of sovereignty and "aboriginal title" today. Since we view this obligation as our responsibility to the Creator, it is our belief that no man-made government or laws can give our land away, take it, extinguish, barter, or change that which is bestowed by our Creator.

To fulfill our obligations, the Creator gave us laws and spiritual beliefs for our protection. These laws are seen as rights and responsibilities that govern all our relations to protect and maintain our distinct identities. Spiritual beliefs among our Nations are reflected through our culture, language, and traditions to live in harmony with nature and all mankind, and are maintained by our elders whose work is to teach the young. Our laws formed from our traditions which developed in close communication with nature and molded our societies. Our laws and spiritual beliefs are meant to protect and not to restrict or oppress us.

This basic expression of our philosophy can be found in the *First Nations Declaration* of the Assembly of First Nations, to which every Indian Band in Canada subscribed in their evidence to the Parliamentary Committee on Indian Self-Government. In spite of the fact that not all Nations, tribal councils, or bands belong or support the Assembly of First Nations, every one undoubtedly supported the *Declaration*.

There is no English or common "Indian" word that describes our philosophy but each Nation recognizes that similar values and purpose in the customs of other "Indian" Nations reflect this philosophy. Similarly, there is no common "Indian" word for the "Great Island" but different Nations have words that translate into a similar meaning. The "Great Island" is the term used to describe what is now called North America and is not the same as the words used to describe the Nations or territories. Each Nation had territorial boundaries but there was also an awareness of the larger land mass which they described as the Great Island. Numerous trade routes extending from north to south and east to west throughout the Americas existed before the arrival of the Europeans. A study of many explorers' journals support the fact that these routes were here when they arrived and were used by them to travel. When our people talk of travels to other lands long before the arrival of the Europeans, this is not idle talk but a fact of "Indian" history.

THE RISE OF GOVERNMENTS

From the foundation of our relationship to the Creator and our beliefs, our governments surfaced and were identified. In our institutions, there was and is no separation of the emotional, physical, mental, and spiritual needs of people from the exercise of governing. Neither was there any kind of separation of the Great Spirit from our governments. In the fullness and wholeness of our governing systems and in our institutions, we celebrated and mourned, danced, held council, and accorded and received recognition, sharing, love, respect, truth, honesty, and patience. Traditions formed into laws as our institutions developed over thousands of years, flourished, and kept us strong as a people.

NATION-TO-NATION RELATIONS

Across the Americas, our Nations flourished within the Nations and Nation-to-Nation through development of a highly efficient bartering and trade system, developing friendship and peace agreements, sharing in one another's customs, recognizing each other's territorial boundaries, forming confederacies and alliances and intermarrying. Though wars took place, this was seen as part of the ways of nature.

"International" relationships were build on the principles of respect, friendship, and peace. No Nation's laws were or are greater than another's and all Nations had equal stature. The highest law, above all laws, is natural law as our Nations developed their laws to flow with nature. When Nations sought peace, help, or trade among one another, this was done by obtaining the consent of the Nations concerned. Each Nation has developed traditions and processes which formalized the agreement process and, in modern terms, this process is recognized internationally as the "self-determination of Nations." The Nations did not practise empire-building against one another, since respect for the land as sacred was an obligation to the Creator. Wars took place when respect or the process of consent was violated. Rather than empire-building, Nations sought peace and alliances as a means of expanding their resource base through trading and bartering.

Confederacies and alliances formed, but there was never any system as exists today at national levels. In our modern forums of decisionmaking, the alliance or confederacy model is more the form of social organization rather than a governing body. Band councils are recognized by Canada as a representative body for an Indian community's aspirations. The Nations are not seen as legitimate links between the Nation and Canada by Canadian institutions.

Many of the Nation-to-Nation relationships and systems for enhancing this growth was based on spiritual goals to live in harmony with nature and all mankind. Translated into modern political terms, this concept is termed "co-existence" or as we say "living side-by-side."

THE ARRIVAL OF THE EUROPEANS

"New human beings have come to our shores" was the observation of Indian Nations on the arrival of the English and French explorers to the east coast. Similarly, the Spanish and English were exploring along the west coast for the Northwest Passage. On both coasts, these "new human beings" were welcomed with friendship and peace. They were malnourished, sick with scurvy, and unclean, but the Indian people took pity on them, and provided food and shelter. The first arrivals took place in the mid-1500s, including representatives of several European nations. However, in the territory now known as Canada, the "Indian" Nations' main dealings and developing relations took place with the English and French.

Clearly, in the beginning, the Indian Nations did not need the English and French nor required anything from them. It was the Europeans who required a basis for remaining—land, food, peace, and trade. On all of these, the Indian Nations were prepared to negotiate a relationship, but not a position that would require giving up obligations for the land or governing authority.

INDIAN/CROWN RELATIONS

What appears to be a common basis for developing relations with the European nations is best expressed by the leaders of the Haudeno sau nee Confederacy (Six Nations Confederacy) in the mid-eastern part of Canada. Their account of the negotiations and resulting agreement with the English is what we call the Original Compact. This compact is not well-known by many Canadians but it is still the basis upon which Indian Nations negotiated and are now prepared to negotiate a co-existence relationship. The Haudeno sau nee call this compact the Gus-Wen-Tah or Two-row Wampum. Their account follows:

> Later on, when your ancestors came to our shores, after living with them for a few years, observing them, our ancestors came to the conclusion that we could not live together in the same way inside the circle. So they decided that something had to be done; because we had to live together somehow, some sort of agreement had to be made. So our leaders at that time, along with your leaders, sat down for many years to try to work out a solution. This is what they came up with. We call it Gus-Wen-Tah or the Two-row Wampum Belt. It is on a bed of white wampum, which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of our ancestors; those two rows never come together in that belt, and it is easy to see what that means. It means that we have two different paths, two different people.
>
> The agreement was made that your road will have your vessel, your people, your politics, your government, your way of life, your religion, your beliefs—they are all in there. The same goes for ours. But there is a little more: it tells that our land is in that row. They said there will be three beads of wampum separating the two,

> and they will symbolize peace, friendship, and respect. We wonder, as we look at this, what has happened to that from your end. It seems that your ancestors were sincere when they made this agreement, yet today our officials try to meet with your government and they are sent to other branches; nothing is ever done. We see people all over who are the same as we are, who have made agreements with your government, and we see that your government is not trying one ounce to uphold those agreements, because those people are starving and dying today. Those treaties are recent, and these are a little bit older than those treaties. But we hold fast to these treaties because our ancestors were sincere; they remember when they made agreements.
>
> We will be the same, the same height. Your nation, your government is over here. Our nations and our government is over here. Never do they cross anywhere, meaning that your government does not have authority to legislate for our people. You will not make laws for our people and we will not make laws for your people. It is simple. It is really easy to follow.

By all accounts, the Haudeno sau nee's agreement with the English, called the Gus-Wen-Tah, was made around the 1680s. As was stated over and over again by the various Nations who concluded treaties or discussed relations with the English Crown, none ever gave up, ceded, or surrendered ownership of their lands. They have made it so clear that by their beliefs and responsibility, they were prepared to share the land with the English, live side-by-side with them, but could in no way give up what is now called title to the land. In all agreements with the English, it was their firm belief that this was the basis on which they were signing peace agreements. It is not their understanding that they were giving up ownership to their lands in exchange for certain promises. It is not possible for them to have given up lands since all have a spiritual relationship to the land and the Creator. This has been the policy of Indian Nations from the beginning which has never changed.

THE SEVEN YEARS' WAR: FRENCH/ENGLISH WAR

The next event of significance between Indian/Crown relations began in 1752 with the French/English War or the Seven Years' War, as it is known.

During this war, both the French and English sought Indian allies from the various Nations they had dealings with. England gained most of the Indian allies because it had promised to protect the land. During the war, England had gained permission from several of the Indian Nations to build forts on their land and about ten to twelve of them were built throughout the area surrounding Detroit and up toward Ottawa. In 1759, France capitulated and England had won the war.

When looking at the question of why England recognized Indian title to the land as its general policy, we can trace its beginning to the conclusion of the Seven Years' War. In concluding the war with France, the *Articles of Capitulation of Quebec* signed between France and England pledged in Section 40 that the Indian allies would be protected in the lands they occupied:

> **Section 40.** The savages or Indian Allies of His Most Christian Majesty, shall be maintained in the lands they inhabit, if they choose to remain there; they shall not be molested on any pretense whatsoever, for having carried arms and served His Most Christian Majesty; they shall have as well the French liberty of religion and they shall keep their missionaries.

An even more important and significant reason for England recognizing Indian title to the land occurred when peace was achieved between England and France. Immediately following, Chief Pontiac told the British to remove all their forts from Indian lands, which the British refused to do. Chief Pontiac then formed a confederacy of many Nations who proceeded to put the forts under siege and burn them to the ground. As they continued successfully throughout the area, they had succeeded in destroying seven of the ten forts and had two more under siege when the British agreed to negotiate.

These events took place in the years 1760–1763. On October 1763, the English had declared their policy for dealing with the Indian Nations and obtained lands for settlement. This came out in the form of law declared by King George III as the *Royal Proclamation*. Many political developments were taking place both in Europe and in the Americas during this time which carry particular significance for Indian/Crown relations with respect to the *Royal Proclamation*, including the development of international law regarding title for non-Christian land.

THE ROYAL PROCLAMATION, 1763

With the military advantage held by the Indian Nations on the east coast, the alternatives left to England other than conquering by military might were for negotiating peaceful settlements. The terms of the *Royal Proclamation* are not the creation of our aboriginal title and rights but really a negotiated set of conditions accepted and put into law by the King of England at that time. The terms of the *Royal Proclamation* are simply a confirmation of what was always there with respect to Indian sovereignty. England had no other choice but to confirm and set down as law, the terms under which Indian Nations were prepared to negotiate. These terms are consistent with those of the Gus-Wen-Tah and reflect the process of consent and recognition of rights of all Indian Nations.

For example, the *Royal Proclamation* does not have in its terms, a condition that one Indian Nation speaks for all. Instead, a process is outlined in which England must obtain the consent of the each Indian Nation in whose territory the English wanted to settle. In the *Proclamation*, the King outlines the way in which the consent of the Nation is to be obtained.

England also recognizes an Indian territory under her protection. Although not every Indian Nation subscribed to the *Royal Proclamation*, it is fair to say its terms reflected England's general policy in dealing with Indian lands and Nations on settlement in the territories of the Americas. The fundamental obligations that England assumed toward the Indian Nations so that their settlements would occur in Canada are as follow:

- That title to Indian land would only be extinguished by consent.
- That title would only be ceded through a fair and open process; once title was ceded, the parties agreed that the obligations would continue to bind them forever.
- That, in dealing with the Indian Nations in Canada, the Royal Majesty agreed to continue to treat Indian Nations as protected people with collective national status, amounting in modern terms, to a recognition of the right to self-determination.
- That the treaties, entered into between the Royal Majesties and Indian Nations are legally binding agreements with consequences in international law.

THE SIGNIFICANCE OF THE ROYAL PROCLAMATION IN INTERNATIONAL LAW DEVELOPMENT

Even as exploration and colonization began to take place by Europeans in the late 1400s and onward, they found a need to outline laws that would be recognized among themselves for the process of obtaining new lands with the least amount of conflict among themselves.

This need arose upon the commissioning in 1492 of Christopher Columbus by King Ferdinand and Queen Isabella of Spain to discover and conquer some islands and the continent in the ocean. At that time, the Pope held that he had the power to grant rights of discovery on emperors and kings as the Vicar of Christ and through powers to "excommunicate" if he so desired. The Pope had so empowered the King and Queen of Spain in that year, and they in turn commissioned Columbus.

The problems arose when kings and queens questioned the authority of the Pope to grant such powers since they did not believe in the Pope. At the same time as Columbus discovered the southern areas of the Americas, the English, French, and Dutch had also sent explorers out to discover new lands for their sovereigns. King Henry VII sent the Cabots out in 1495, who landed on the east coast of what is now Canada. Spain could not totally rely on the authority of the Pope in claiming all of the lands in the western hemisphere since they knew this claim would be immediately challenged by France, England, and Holland.

When Papal authority could not work, they all agreed on the right to claim based on discovery. Here, they found it hard to define what kind of act would show first discovery. It was clear the mere planting of a flag would not be sufficient to show how much territory was being claimed, and that the territory involved was enormous.

Since simple acts could not hold up the right to territory based on first discovery, they felt that effective occupation of the territory had to be demonstrated. To show effective occupation meant then the European nation had to show that the non-Christian peoples (aboriginal peoples) had been conquered and their territory was being effectively administered by the European nation involved, or the European nation had to show that it had the consent of the non-Christian peoples to acquire title to non-Christian lands and could effectively administer that territory.

It should be remembered the international rules for acquiring title to land were divided between Christian and non-Christian lands, Christian lands being European nations and non-Christian lands being those discovered by the European explorers. The rules that were laid down were for the European powers in organizing among themselves how they would proceed to acquire title to non-Christian lands. The rules did not apply to the people in non-Christian lands, as each European nation had to deal with them separately either by conquest or consent and effective occupation.

Once a European power demonstrated its control over a certain territory, then other European nations recognized that European power's right to title in that territory, and the international rules regulated the competition between the European nations. The rules had no bearing on the relations between those powers and the aboriginal peoples.

When it was agreed among the European powers to demonstrate their rights in a territory through conquest or consent, then this was the choice facing these nations in their dealings with the Indian Nations in the Americas.

This was the choice facing England on the east and west coast of North America upon discovery. When England defeated France in the Seven Years' War, the Crown still had to show its right to the territory against the other nations of Europe. In not being able to defeat Pontiac, and knowing that the military might of the Indian Nations was capable of pushing them into the ocean, England chose the route of obtaining the consent of the Indian Nations for acquiring title to the lands. England expressed this policy many times to the European nations early on in the controversy over Nootka Sound with Spain.

With Pontiac's confederacy threatening England's hold over the east coast, England agreed to the process of obtaining Indian consent by King George III's *Royal Proclamation* of 7 October 1763.

At the same time as the European nations were developing the process of regulating international rules on title, there were also changes taking place within each of the European nations in their forms of governing. Our major concern is the changes taking place in England at this time.

Since emperors and kings throughout Europe were using their powers to rule tyrannically, their citizens were moving to make changes in the forms of government and law-making. In England, at this time, there was a brief overthrow when the King lost power and Oliver Cromwell took control. However, when the English citizens found his rule unsatisfactory, they were happy to replace him with the King again. At that specific time, King George III was king and had the force of law. Since the King had the power to make law, the *Royal Proclamation* became law through his act of proclaiming.

Although the King had regained the power to make law, this did not stop the process of finding some way for the people to have a say in the making of laws and policies. Over a period of many years after 1763, parliaments, cabinets, and the court system formed as the basis of governing in England and shared power with the king. However, there was a power struggle taking place between Parliament and the King over who had the power to make laws. Eventually the King lost this right as Parliament won the power struggle and proceeded to make the laws governing England.

However, in the history of the English Parliament, the *Royal Proclamation* of 1763 was never repealed and continues to remain on the law books as a Statute.

INDIAN/CROWN RELATIONS

Following the *Royal Proclamation*, the English Crown concluded over eighty treaties on the east and west coast of what is now Canada. Those concluded in British Columbia are fourteen treaties on Vancouver Island, when Governor Douglas headed the colony of Vancouver Island in the 1850s.

As England proceeded to conclude treaties, settlers moved over here from Scotland, Ireland, Wales, and England. They set up colonies on the east coast, inland from the coast to about the Ontario border, and on Vancouver Island and the British Columbia mainland. On the east coast, there was Nova Scotia, New Brunswick, Prince Edward Island, and Upper and Lower Canada. From 1763 to 1867, these colonies were governed by the Parliament in England.

THE BRITISH NORTH AMERICA ACT, 1867

As the colonies in Canada grew, they began to meet to discuss uniting the colonies and governing themselves. When the American colonies revolted against the King and won their independence, there was a fear that the American colonies might try to make inroads into the colonies in Canada through threat of war.

The process of confederation began in 1864 when Nova Scotia authorized its leaders to meet with other colonial leaders to discuss confederation. Since, by 1867, the Queen was no longer in power or had the force of law, it was the English Parliament that the colonial leaders looked to for passage of the *British North America Act* into law. This was done and on 1 July 1867 the *British North America Act* was passed, resulting in the legal creation of Canada as a nation.

The colonies in Canada who originally formed the confederacy were Nova Scotia, New Brunswick, and Upper and Lower Canada. Prince Edward Island joined at a later date, as did all the other colonies who were classed as provinces. The *British North America Act* outlined the powers of the central government as the federal government and the powers of the provincial governments.

INDIAN/CANADA RELATIONS

Since the Indian Nations were making agreements with the English Crown, there was no mechanism developed for making agreements with Canada. Nor were the Indian Nations involved in the confederation discussions.

However, England had obligations to fulfill in terms of the treaties it had signed with several of the Indian Nations. In passing the *BNA Act*, the English Parliament put the responsibility for administering its obligations to the Indian Nations as part of the package of confederation. The arrangement came in the form of Section 91(24) of the *BNA Act* which stated that the federal government had the power to make laws for "Indians and lands reserved for the Indians."

This arrangement was made between Canada and England without the involvement or knowledge of the Indian Nations. In the final agreement, there was no Indian consent for Canada taking over administering England's obligations to the Indian Nations in Canada under Section 91(24).

CANADA'S TRUST OBLIGATIONS

With Canada agreeing to administer England's obligations to the Indian Nations, however, this created a legal trust obligation on the part of Canada to protect the interests of the Indian Nations against all outside interests including the provincial interests.

In international law, a trust relationship is one in which those holding trust obligations must lead the people to whom a trust is owed to self-determination and independence. Only upon the people obtaining self-determination and independence can the trust be devolved back to them. This is still international law and continues to apply.

THE INDIAN ACT, 1868

With the power to make laws for Indians and lands reserved for the Indians resting in the hands of the federal government, Parliament passed an "act for the gradual civilization of Indian peoples" in 1868. As in the case of the *BNA Act*, there was no Indian involvement or consent attached to the *Indian Act* regarding its terms or the process by which it would be implemented. There are two important points to understand about the *Indian Act* in its intent and implementation. First, Canada used its trust obligations to assimilate the Indian people using the *Indian Act* as one tool, and the other is the processes used to implement the terms of the *Indian Act*.

GENOCIDE VS. ASSIMILATION

In the colonization which took place around the world by the European nations from the late 1400s through the 1800s, it was the choice of some of those nations to obtain title to the lands by conquest. In doing so, these nations committed acts of genocide upon aboriginal populations in nations of Africa and Asia as well as South America. By the late 1800s, the citizens of the European nations began to protest these cruelties and demanded that the practice of genocide be stopped. For these nations, it was proving to be costly at home and abroad, so genocide was no longer a policy of the European nations.

However, unknown to the indigenous peoples around the world, England was already refining another process in Ireland for taking lands and resources. This process is what we all know as assimilation. England practised this on the Irish beginning some 800 years ago and the Irish today are still fighting its hold on their lives.

Genocide is the practice of wholesale physical slaughter of a people by any means which would remove them as obstacles to taking lands and its resources. Assimilation is the practice of using certain processes and tools for killing a people's spirit. In assimilation, governments can tell their citizens: "See, we are being good to the Indian people because we have not killed them. They are whole and living among us." While at the same time, they have our souls in their welfare pockets or caused our death by other means not directly tied to them.

In the choices facing Canada for gaining control of our lands and resources, assimilation was the policy by which they proceeded to weaken the Indian Nations. Their goal was to get the Indian to cease to be Indian and become white.

Under this policy, the *Indian Act* became a key legislative tool for assimilation. There are three major functions under the *Indian Act* that are intended to assimilate Indian peoples.

- Creation of "reserve" lands in which the reserve lands did not and do not reflect the traditional tribal territories of the Indian Nations but are all vastly reduced in size.
- Creation of "band councils" which were and are intended to replace the traditional tribal governments of the Indian Nations and undermine their authority. Additionally, the band councils were not given any power to make decisions but were left in the hands of the agents of Indian Affairs.
- Definition of an "Indian" under the *Indian Act* which in no way reflected or reflects the identity of our citizens of Indian Nations.

The process of assimilation was deadly in its impact on our Nations and had many eager minds to do the job. Complementing the *Indian Act* were other actions that killed our food base and decimated our people across the land.

- Under a scorched earth policy, the orchards and acres of vegetables grown by the Haudeno sau nee were burnt to the ground; the buffalo on the prairies were slaughtered till there were none left; and the fish on the west and east coast were vastly diminished through trade of the Hudson's Bay Company.
- Alcohol was brought in as part of the trade practices of the fur trade companies, reducing the bargaining power of the Indian hunters and trappers. For example, in British Columbia, the Hudson's Bay might pay $30 to $40 to a trapper for his furs. It may have cost the Hudson's Bay $300 to $400 to get the furs back to England. In England, the same fur pelt would have a market price of $3,000 to $4000.
- The religion of the Indian people was attacked by the churches of Europe as pagan and of the devil. Threats of hell and damnation were reaped on the Indian people who practised their religious beliefs. These Orders were given free rein to do so.
- Education was made compulsory for Indian children, who were then separated from their parents to be placed in schools that forbade the Indian languages and history but taught a perverted version of Indian life.
- Outspoken Indian leaders were maligned, jailed, isolated, and executed for their stands against what the Indian agents were doing.
- Diseased blankets of smallpox, flu, and tuberculosis were brought in, which killed literally thousands of our people in a short space of time. Many of the people in our Nations who held the traditional ceremonies died in these epidemics.
- Defining who is an Indian under the *Indian Act* accomplished the specific task of dividing Indians in order to conquer them. At this time, after confederation and up to the 1980s, the Indian people held the majority in many areas of the country. Canada's leaders were fearful of the Indian Nations organizing and forming alliances to wipe them out, so the idea of divide and conquer became rooted in government policies both at the provincial and federal levels.

In all of this, information regarding Canada's systems of governing were kept from the Indian Nations as was this policy of assimilation. Their true goal was to assimilate and enfranchise every Indian in Canada and to take away the Indian lands putting these under the jurisdiction of the federal and provincial governments.

CANADA'S TREATIES WITH THE INDIAN NATIONS

Upon confederation, Canada was faced with the task of obtaining lands to the west and north of the provinces in the east that now formed Canada as a nation. Upper and Lower Canada were changed to Ontario and Quebec under the *BNA Act* and the Ontario border was the extent of the boundaries. At the same time, the confederation leaders held the vision of stretching Canada from the Atlantic Ocean to the Pacific Ocean. To do this meant they had to acquire the lands for settlement and the resources for trade.

The problem Canada faced when looking west was the powerful Indian Nations of the prairies. The leaders felt at that time that if they entered into war against the Indians, the Indian Nations on the prairies would ally with the Indian Nations of the east and drive them into the Atlantic Ocean. Conquering the Indians was out of the question for Canada. Being a young nation with a small military and virtually no police force, Canada looked to the United States' experience of their Indian Wars—an experience that was costing the United States government some $20 million per year. Canada could not afford those kinds of costs and concluded that war was not an option for obtaining lands.

As an alternative, Canada opted for England's process of obtaining the consent of the Indian Nations for settling in their territories. But Canada also had another choice which was to lie to the Indian Nations and this is what she chose to do when developing treaties with the Indian Nations.

This lie came in the form of developing treaties with the Indian Nations in the name of the English Queen. To the Indian Nations, they had heard of the Great White Mother over the waters and in negotiating treaties with the Indian agents, understood they were signing treaties with the Queen in right of England. The policy of Canada was that these agents were to go out in the name of the Queen only.

At no time did Canada go out in the name of Canada nor did they inform the Indian Nations that the Queen had lost her power to make laws in England. The Indian Nations who were negotiating in good faith had no way of knowing the Queen had no authority and looked upon their treaties as a sacred oath more to the Creator that they would hold to their part of the treaty and maintain peace. Evidence to the Parliamentary Sub-Committee on Indian Self-Government by elders of the prairies pointed out many of the written treaties did not reflect what was agreed to orally. Nor were the treaties a means of their transferring title to the Crown. They understood they were sharing their land with the Crown since their spiritual relationship to the lands did not allow for selling or giving up their obligation to care for and protect the lands. They felt it was not theirs to give but represented many aspects of their spiritual way of life. Since they continue to uphold their oath to maintain their part of the treaties as a sacred oath, the Indian Nations on the prairies continue to maintain these treaties as sovereign treaties between Nations.

In all Canada concluded eleven treaties under this process which we know today as Treaties One to Eleven. As treaties were concluded and settlers moved in, provinces formed which were then brought into confederation. In British Columbia, Governor Douglas had already concluded fourteen treaties in the name of the Queen before British Columbia entered confederation. As in other areas, the Indian Nations in BC refused to extinguish their title but instead demanded recognition of their ownership to the lands. Since Governor Douglas no longer had the resources to conclude further treaties with the Indian Nations, almost all of BC continues to remain under the ownership of the Indian Nations as traditional tribal territories. BC entered confederation in 1871 without having resolved the Indian land question, and though various commissions were formed after confederation to deal with this issue, none ever had the authority to act in the interest of the Indian Nations. As a consequence, aboriginal title continues to remain a burning issue in BC between Canada and the Indian Nations as each commission was told the Indian Nations would not give their consent to extinguishing title to the lands.

To this point, we can emphatically state that Canada does not have the consent of the Indian Nations for title to the lands and the treaties are sovereign treaties. Our Nations were never conquered by war nor assimilation and continue to this day to demand recognition of the treaties as among Nations and aboriginal title where there are no treaties.

Although the *Indian Act* continued to be amended several times after 1868, the terms only got worse for the Indian people as band councils and individuals refused to give their consent to various policies. What required consent was made compulsory including enfranchisement, and education. In 1927, Indian religion was outlawed as was organizing around land claims.

With the banning of religion, many of our traditions went underground as our people kept their practices alive. In the political development, many Nations were making representations to the Queen and Privy Council in England and the outlawing of organizing around land claims did not stop this struggle. Leaders such as Andy Paull used other issues such as fishing and economic development to keep the issue of aboriginal title alive.

THE MODERN ERA

In 1951, the *Indian Act* was again amended and those sections that outlawed Indian religion and land claims were repealed but sections on enfranchisement remained.

With these changes, the Indian people began to organize politically for the recognition of title. Leaders had to have great initiative and ingenuity to scrape funds together for travel and legal representations. People in the communities gave willingly provided food and lodging to their leaders when it was required. Sacrifice of self, family, and personal interest on the part of many leaders was the mainstay of the fight and momentum began to build.

THE WHITE PAPER POLICY

As our leaders continue to build political awareness among our people, Trudeau came to power in 1968 as Prime Minister of Canada. The following year, he and then Minister of Indian Affairs Jean Chrétien put together their policy for Indians called the White Paper Policy.

This Policy's main objective was to finalize assimilation by putting Indian people under the jurisdiction of the provinces where we become a minority and citizens as all other Canadians. Their proposal was to repeal the *Indian Act* and amend the *Constitution* to eliminate all reference to Indian people. Eventually Indian reserves would disappear as we took out place among Canadian society.

This Policy provided the key element that galvanized Indian people across the Nation to organize as a unit, resist the White Paper Policy, and force recognition of aboriginal and treaty rights. In 1969, every province and territory saw the formation of Indian political organizations. At that time, the National Indian Brotherhood was in its formative stages and with the power of organized action among all the groups, Trudeau agreed to shelve the White Paper and launch a process of consultation with the Indian people through the National Indian Brotherhood and the provincial /territorial organizations regarding Indian rights.

THE CALDER CASE AND LAND CLAIMS POLICY

In 1973, the Nishgas' case for title to their lands reached the Supreme Court of Canada. In that year, the seven judges of the Supreme Court gave their judgment which was split on the issue. Three judges ruled in favour of the Nishgas and three ruled against. The seventh judge ruled on a technicality of process against the Nishgas.

However, the argument of the judges who ruled in favour of the Nishgas was strong enough for Trudeau to reconsider his position that there was no aboriginal title and treaties are no longer in effect. In place of that he announced a land claims policy and process of negotiations for resolving land issues. The major component of this policy was that Indian Nations would have to accept extinguishment of their title in return for certain monetary compensation and other programs. Unknown to the Indian Nations, Chrétien had written a letter to Trudeau on 30 April 1971 outlining a strategy for implementing the White Paper Policy, confirming that the objectives of the Policy remain valid.

The strategy that Chrétien and Trudeau agreed would be done without open debate or knowledge of the Indian people and the people of Canada was as follows.

- To avoid the courts as a way of resolving title since the courts could rule in favour of the Indian people and instead promote negotiations.
- Federal negotiators were to avoid confirmation of title as a basis for agreement as well as Indian government.
- Provincial participation is to be regarded as essential because one aim was to shift jurisdiction of Indians to the provinces.

- Negotiations with Indians to be on a "pragmatic" basis, that is, with those groups prepared to accept extinguishment of their title.
- Priority is to be given to those areas where major resource development is to occur.
- Rigid time limits are to be set on negotiations and enforced with threats of legislated settlements.
- Existing national and provincial Indian political organizations are to be avoided in negotiations.

And the list goes on as the strategy was refined through the 1970s. Chrétien pointed out in his letter to Trudeau that "Progress will take place in different areas in different ways at a different pace." Unknown to the Indian people, this strategy was launched with the Land Claims Policy in 1973 and continues today.

Of all the strategies, processes, and political manoeuvrings of the Canadian government, it is no mean feat of the Indian Nations that we can say today that Canada had not yet succeeded in obtaining Indian consent to title to the lands. In all the negotiations that have taken place to date, there is only one area which has signed a land claims agreement and this was done under duress. In 1975, the James Bay Cree signed the James Bay Agreement as Quebec and the federal government permitted hydro development to take place while negotiations were being carried out.

The land claims negotiation process is a particularly dangerous route for Indian Nations, since the process meets international standards for obtaining title to territories. The Land Claims Policy deals with extinguishment of title through a process of ratification for obtaining consent. It would be difficult for any Nation later to argue its case if the requirements for consent to extinguishment are met. Now there are several negotiations taking place but to date only the Committee for Original Peoples Entitlement has finalized an agreement in 1984 for the Western Arctic Inuit.

THE CONSTITUTION PROCESS, 1980 TO 1987

When the English Parliament passed the *BNA Act* to form Canada as a nation, there was no agreement on how the *Constitution* would be amended since Canada's Parliament was not in existence at the time. Consequently, the amending formula for changing the constitution remained with the English Parliament until such time as the federal and provincial governments could agree on a formula. Many efforts were made by succeeding governments to agree on a formula but none succeeded since both levels of government were reluctant to lose power or jurisdiction.

In 1931, the *Statute of Westminster* was passed by England to allow Canada's amendments to go through the English Parliament without changes.

When Trudeau came to power, he began a series of federal/provincial ministers' meetings to resolve this dilemma. By 1980, with the formation of the First Ministers' Conferences on the *Constitution*, they were no closer to a solution. In frustration and continued deadlock, Trudeau proceeded to act unilaterally to patriate the *Constitution*.

On 6 October 1980, he introduced a resolution into the House of Commons for patriation of the *BNA Act* and included in his resolution a *Charter of Rights and Freedoms*. Part of the *Charter* recognized and affirmed the aboriginal and treaty rights of the aboriginal peoples of Canada. Again, there was immediate organization by Indian people across the country to oppose patriation because of its threat of breaking the political link between the Indian Nations and the Crown of England.

Once Canada succeeded in the ability to amend the *Constitution* in Canada, it was felt that all reference to aboriginal rights would be amended out and there was no way in the *Constitution* for the Indian Nations to prevent this.

As the fight raged throughout Canada, the provinces decided to take Trudeau to court on the basis that their consent was required for patriation. Through effective Indian opposition, patriation was delayed as we organized for an international lobby to take place in England, the United Nations, and other countries of the world.

In November, 1981, the Supreme Court of Canada told the provinces in its judgment that there was no law saying that Trudeau could not patriate without their consent; however, by convention (tradition or custom law —unwritten), it was not the custom for the federal government to go ahead without the provinces.

This forced Trudeau to negotiate with the provinces and in the deals which took place that month, all reference to aboriginal rights was dropped from the proposed resolution. This created a united Indian opposition as many of our leaders were in Europe at the time to make international statements and world coverage. On the home front, there were demonstrations taking place across the country.

The result was an agreement to put the sections on aboriginal land treaty rights back in. But this was qualified with the term "existing" rights. Also included was another Section (37), which called for a first ministers' conference to be called by the Prime Minister for the identification and definition of aboriginal rights to which representatives of the aboriginal people would be invited.

With this proviso, the resolution was sent to England and the *BNA Act* was patriated to Canada on 17 April 1982 to be known as the *Constitution Act*, 1982 and 1867.

The amending formula agreed on was agreement of the federal government and seven of the ten provinces totalling fifty per cent of the population of Canada.

THE CONSTITUTIONAL ACCORD, 1983

Following patriation, Trudeau announced the First Ministers' Conference on Aboriginal Rights for March 1983. Again, the Indian Nations were in a dilemma as now we faced twelve provincial/territorial governments in addition to the federal government with no vote or veto at this conference.

The aboriginal peoples agreed that they would push for an ongoing process, aboriginal title, and the sovereignty of the treaties as a basic position. Discretion being the better part of valour, the first ministers avoided recognition of title and treaty rights and in its place signed an accord which called for four more conferences over five years. The representatives of the aboriginal people put their signatures to this accord and this is the only other evidence of Indian consent between Canada and the Indian Nations besides the Treaties One to Eleven and the James Bay, COPE Land Claims Agreements. There is still one conference scheduled for 1987 for identifying and defining aboriginal rights.

Since the patriation of the *Constitution*, the debate among Indian people regarding the first ministers continues due to the confusion surrounding strategy and political implications. Those who believe strongly in their sovereign status as Nations do not believe in attending the conference as invitees. Especially with the ten provincial premiers and two territorial governments involved. This position is based on the belief that Nation should sit with Nation and not the sub-governments. The provinces are also a threat to treaty and aboriginal rights since their interests are in direct conflict with the goals of Indian Nations for control of their land and resources. Never before have the Indian people had decisions regarding our lands and lives placed in provincial hands. The patriated *Constitution* sets the stage for finalizing the White Paper Policy objectives by placing us under the jurisdiction of the provinces when this becomes politically expedient. The Indian Nations who do not want to sit at the constitutional table believe we have a better chance by exerting our sovereignty at the international level with Nations who can empathize with our experience. Nations such as those in Africa and Asia underwent similar experiences as we are going through and achieved the liberation of their people. Building relations with them to understand our position and support us could apply the right pressure to Canada to negotiate in good faith regarding our aboriginal title and treaty rights. At this level, our evidence on consent is important as is the trust obligation.

THE ROUTE TO DECOLONIZATION

After World War II, the European nations who colonized the world found themselves in the position of lacking resources to keep colonialism going. They found it expensive to keep people subjugated and the war had decimated their countries to the point where they needed all their resources for rebuilding their own countries. At the same time, the people who struggled under colonialism were beginning to rise up and demand their independence.

The United Nations formed after the Second World War to help nations rebuild and to promote peace. Injected into the many issues of the United Nations' debates were discussions on colonialism by those countries most affected by it.

In response to the needs of the colonized peoples and those nations who no longer wanted to maintain their colonial control, the United Nations set up a trusteeship system of aiding colonized countries to decolonize. In essence, a mother nation or stable nation was appointed as a trust for the colonized nation to help it achieve self-determination and independence through decolonizing. The trust nation was to assist the colonized country regain economic independence for self-sufficiency if this was ravaged, regain social stability and order, develop an education system to suit the needs of the population and under their control, and assist them reach the point of determining their own political, economic and social status. Only when this has been achieved could the colonized nation devolve its trust or tell the trust nation that it could now stand on its own feet and take its place among the nations of the world and the trust was no longer necessary. Those colonized nations were known as protectorates, as being under the protection of the trust nation.

This is the trust obligation that Canada was burdened with internationally when England placed the Indian Nations under the protection of Canada —an obligation England had undertaken in treaties with several Indian Nations.

It is Canada's duty to ensure the Indian Nations are being assisted to decolonize until we have the ability to be self-determining in our political, economic, and social status. Canada has used the trust to assimilate Indian people in the same way it has tried to use its democratic institutions to class us as minorities and make its constitution more democratic regarding Indian people. It does this in hopes of avoiding the sovereign status and the international/political implications which the trust represents. This position is one which Indian Nations are taking internationally rather than sit with the first ministers.

On the other side of the question of the first ministers, there are those First Nations who believe that if we do not attend, the two levels of government will go ahead and make the decisions for us. Regardless of the fact we are invited as observers with no say, these First Nations believe we must make some attempt to show that we are pursuing every avenue for resolving the issues of title, rights, and self-government. In the past three conferences that have already taken place, we are finding the constitutional process one which is complex, with too many interests being represented at one table.

In addition to the federal and provincial interests, there are territorial, Inuit, Métis, and Indian interests. This multilateral approach may be the cause of the process ultimately failing since seven of the ten provinces are required along with the federal government for amendment of the *Constitution.* There has been no success in obtaining seven provinces for approval of even as bottom-line a position as Indian self-government. Over and above the many interests, there is still the major block of governments who do not have the political will to recognize our aboriginal title and treaty rights.

THE MUSQUEAM DECISION

As in everything else Canada has done, it has attempted to interpret its trust obligations as one which is of no legal effect. It has tried to interpret its trust as one which is a political trust and not legal. The Indian Nations argued year after year that Canada's trust is legally binding.

Upon the lease of Musqueam Band land to the Shaughnessy Golf Course, Indian Affairs did so without following the instructions of the Band and the terms of the lease were signed without the Band's full knowledge of what had gone on by the Indian Affairs administration. On investigation of the circumstances, the Band took Indian Affairs to court for breach of trust and sued for some $30 million.

The lower court ruled in favour of the Musqueam Band and awarded them $10 million on breach of trust. The federal Justice Department appealed the decision to the Federal Court of Appeal which overturned the lower court's decision. The Musqueam Band then appealed to the Supreme Court of Canada where their judgment came down in 1984.

The Supreme Court ruled in favour of the Musqueam Band stating that the federal government not only has legal trust obligations to Indian people but it went further and said it has a fiduciary obligation. This means that Canada not only has a legal trust but must also carry this out with the highest standards of professionalism and integrity. Chief Justice Dixon also stated in his judgement that aboriginal title is a legal title which predates the *Royal Proclamation* but did not specify exactly what this title consists of.

The Court also reprimanded the government for the way in which it handled this case and ruled that the statute of limitations begins to run from the time the beneficiaries of the trust learn of the violations of a trust, and not from the time the breach is actually committed.

This ruling confirms the Indian position of Canada's legal trust obligations and strengthens our position in the international forums for decolonization. It also means the provincial government of BC must look at exactly what kind of title it does have to Indian lands since it is now in a tenuous position. In the meantime, should any Indian Nation give its consent to extinguishing its title, that Nation can weaken its position at the constitutional table and at the international level.

BILL C-31

Ever since the passage of the *Indian Act* in 1968, the Indian people of Canada have been faced with the inhuman task of restoring recognition of their identity. The *Indian Act* definition of who is an Indian created much turmoil and grief by its attack on the heart of our culture. Through every possible means, the Indian agents worked to enfranchise every Indian in Canada so that by the 1980s, there are some eighteen categories of "Indians." This aspect of the *Indian Act* effectively caused the divisions amongst Indian Nations.

This issue is emotionally explosive for the simple reason that it attacks an individual's identity and splits families and communities. However hard this reality has been for our people, it is to the credit of those who were enfranchised by Canada that they chose to fight this inhuman legislation to their utmost. In the final analysis, they found themselves fighting their own for the right to re-establish their national identity and that prescribed by the *Indian Act*. These actions did not succeed in eliminating from the enfranchised their desire to remain Indian or practise their traditions. The greatest part of this struggle was knowing that the Canadian government did not have the political will to correct this process, and the assimilation of Indian people was making it harder for many of them to understand where the responsibility rested for the fraudulent forcing of enfranchisement on many people.

In 1976, Canada became a signatory to the United Nations Covenant on Civil and Political Rights. Following that, a Maliseet woman named Sandra Lovelace went before the United Nations Human Rights Commission, charging Canada with certain violations under the *Charter* with respect to loss of her status through marriage to a non-Indian.

Despite Canada's attempts to pervert the truth to the United Nations, saying the Indian leadership supported the legislation and paternal lineage was traditional, the United Nations Human Rights Commission found Canada in violation of the sections of the *Charter*. Canada made a commitment to the U.N. that the legislation would be corrected by 1982. In September 1982, a Parliamentary Sub-Committee was set up to hear presentations on Indian Women and the *Indian Act*. From that process, Bill C-47 was developed to eliminate from the *Indian Act* discriminatory sections. However, before the Bill could be processed through Parliament, an election was called and the bill died on the order paper.

Additionally, Section 15 of the *Charter of Rights and Freedoms* was to come into effect 17 April 1985. This meant that all legislation had to conform to the equality clause of the *Constitution*, 1982 Charter. This additional requirement meant the new Conservative government had to do something about the discriminatory sections of the *Indian Act*. In February 1985, the Honourable David Crombie introduced Bill C-31 into the House of Commons to amend the *Indian Act*. The Bill had minor amendments made to it and passed into law effective 17 April 1985.

The Bill does not serve to heal deep wounds caused by the enfranchisement of Indians. There are many Nations who take the position they will not allow non-Status back to their bands. Legally, the bands cannot now stop the process for reinstatement of many non-Status but the daily contact can be made difficult. The Bill continues to be unsatisfactory to all concerned and tends to create another category of Indian people instead of resolving current divisions.

Under this Bill, all those enfranchised are entitled to regain their status but not band membership. Women who lost status through marriage gain both status and membership. The children gain status but not band membership unless a band makes the choice of controlling its membership and includes the children. The bands cannot bestow status although they can bestow membership. If a band does not take over its membership, Indian Affairs will carry this function and will bestow membership after two years.

In 1951, when the *Indian Act* was amended and a registration list was developed based on band lists of the time, many people were omitted due to their absence from the community at the time. Many were out hunting, trapping, and caring for the land when registration took place. Unfortunately, Bill C-31 does not address this wrong and these people continue to be classed as non-Indian.

Bands take the position that Indian governments must have the right to decide their membership. But Indian governments cannot develop until all people are brought back together, without the non-Status/Status division. Otherwise, Status will decide through the band councils whether non-Status are Indians or not. Using band councils will leave the non-Status out of the Indian government decisionmaking that affects them. This is the kind of manipulation Canada continues to perpetuate by not listening to the wisdom of the Indian people and taking the recommendations they make to heart.

INDIAN SELF-GOVERNMENT

In late 1976, a new cry emerged among the Indian people for a stronger political base in the form of Indian government. At that time, there was no certain view of what this Indian government could or would consist of but the idea began to take hold as groups across the country pooled their research and worked to define this concept. What everyone agreed upon, as a first step, was the Department of Indian Affairs had too much control and the way to change that was to put this control in the hands of Indian governments.

Over most of the country, many felt the band councils would form the basis of Indian government. At this time, other Indian groups were preoccupied with the political issue of enfranchisement and securing their membership basis, so much of the Indian government debate occurred among the "Status" Indian population, who bore the brunt of Indian Affairs policies and procedures.

Since band councils were originally created as a form of the federal Indian agents, to control indirectly Indian people on reserve using their own people, it stands to reason that frustration would eventually take its toll on the councils. Since they had no power to make decisions and to this day are told how their money is to be spent, how much they are to get, and how they are to account for it, the feeling of powerlessness manifested itself in national Indian support for Indian government to have jurisdiction in its own territory for its citizens.

At the time Indian pressure had built towards resolving the issue of enfranchisement, this pressure was also felt by the government to pursue a policy of Indian government which had yet to be defined. In response to this pressure, Minister of Indian Affairs, the Honourable John Munro, when he was in power, approved a process for Parliament to set up public hearings into Indian self-government. The job of the parliamentary committee was to travel nationally and internationally to hear from Indian people what their hopes were for governing, how they saw this developing, and what role the federal government would have.

The Penner Report was the result of the hearings into Indian self-government, which was released in 1983. This report had recommended that Indian Affairs be phased out over five years, that a process for resolving land claims be redefined through Parliament and extinguishment of aboriginal title no longer be a prerequisite condition for negotiation, and fifty other recommendations relating to Indian self-government.

Although attempts were made to put a bill together to enact Indian self-government, the only success to date is that now before Parliament for the Sechelt Band, known as C-93. The federal/provincial version of self-government is as far away from the Indian interpretation as Pluto is from the Sun, and is an unacceptable model to the Indian bands in Canada.

Bill C-93 proposes to enact a municipal form of government that puts Sechelt lands under provincial jurisdiction by transferring title to the band in a fee simple. This process also takes the Band out from under the trust obligation of the federal government and places them under the Sechelt Act without this protection. Bill C-93 does not reflect in any form the sovereignty of the Sechelt people and puts their aboriginal title in danger. The terrible truth of this bill is not that the terms would be unacceptable if the Sechelt people fully knew the implications of agreeing to totally enfranchising themselves as a people. It is the question of how well they have been informed of the implications and of the process of giving their consent to this arrangement. Consent to give up the trust must be an informed consent, as in the case of extinguishment of title.

DECLARATION OF THE FIRST NATIONS

We the original peoples of this land know the Creator put us here.

The Creator gave us laws that govern our relationships to live in harmony with nature and mankind.

The laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provided us with all our needs. We have maintained our freedom, our languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities given to us by the Creator for the lands upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other nation.

December 1980
Ottawa
The Assembly of First Nations

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3

JUSTICE AND NATION BUILDING: A COMPARISON OF THE LHEIT-LIT`EN PROCESS AND TRIBAL GOVERNMENT IN ALASKA

RESOURCE PERSONS

David M. Blurton, Department of Rural Development, University of Alaska, Fairbanks (Bethel), Alaska

Erling V. Christensen, Self-Determination Coordinator, Lheit-Lit`en Nation, Vancouver, British Columbia

This session focuses on the evolution of the self-government process in the Lheit-Lit`en Nation in British Columbia and the healing process the community went through in order to prepare itself for self-determination. The discussion then turns to a consideration of tribal government structures for rural Alaskan villages and the issues surrounding the delivery of more relevant justice services.

THE LHEIT-LIT`EN PROCESS

Erling Christensen

The Carrier Tribal Council occupies geographic territory in north central British Columbia that includes the Lheit-Lit`en Nation. The Council is responsible for the largest territory in BC and Lheit-Lit`en is the largest nation within the Council in territory but not in population.

Like so many other Native communities in British Columbia and the rest of Canada, Lheit-Lit`en has gone through a process of cultural destruction over the past 100 years. This destruction was both economic and social, with resulting problems of substance abuse, alcoholism, and unemployment, which ranges up to ninety-five per cent in some villages. Today, there are approximately 8,500 reserve members and an off-reserve population of 8,000. Most members live in fairly isolated communities.

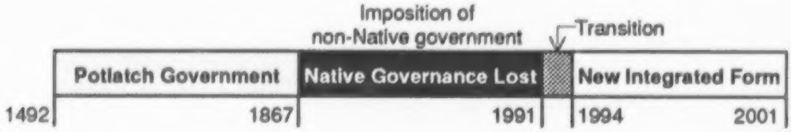
In 1989, I was asked by the Tribal Council to help develop infrastructures at the band and community levels so that they could assume control over their social, health, and educational services. For a number of years, the Tribal Council has been taking over a variety of provincial government services including child welfare. In 1990, the Council decided to prepare a self-government proposal for the Lheit-Lit`en Nation and Carrier Country. One of the first things that came out in discussions with the elders and chiefs was that we were not really talking about self-government—we are talking about government.

We are not talking about a process that is going to be given to us by the federal or provincial governments. We are approaching this differently. We are saying to the governments, "We are a nation and you are going to negotiate with us on that basis." It is a proactive rather than a defensive stance based on the advice of elders who asked, "Why are we asking for something that we have never given up?" Most tribal groups in British Columbia have never given up their government. It was taken away from them. There are no treaties. There are no land settlements. Many claims but no settlements. In other words, what has happened to the political structure of Lheit-Lit`en Nation and Carrier Country is that, over a period of 100 years, slow erosion of all aspects of their culture and government has taken place.

Our instructions were to speak with all community members to solicit their views on how they see themselves. They told us about their relationships with community members, other bands in Lheit-Lit'en, and other nations. In turn, they discussed how those relationships relate to the federal and provincial governments. We did all that by beginning an educational process, by going through the history of what has happened to the Lheit-Lit'en Nation and Carrier Country.

Until the 1800s, what amounted to a potlatch government existed. Then the potlatch government was destroyed and a non-Native government was imposed. The bands became separated, marginalized, and isolated through a variety of mechanisms. The Church was very instrumental in taking control away from the bands. The control of the chief was marginalized. The priests would appoint other Natives to operate as watchmen. Although this was part of the Native tradition, the appointments were not done within the traditional power structure of the Carrier culture. During this time, control shifted away from the community—away from the elders and the chief—and into the hands of the Church and the federal and provincial governments.

Table 1. History of the Lheit-Lit'en



1850s	Roman Catholics - Morris and Durier
1875	Creation of Indian Act
1850 - 1915	First official Government Chief
1912	Sale of Homelands IR#1 Prince George
1925	Illegal to practise potlatch
1927	Illegal to raise monies for land claims
1936	Lheit-Lit'en held last traditional potlatch
1950	Allowed to legally drink
1958	Allowed to legally vote
1969	White Paper
1991	Change from Section 74 Indian Act to Section 74 Band Custom
•	January - Lheit-Lit'en Council initiates new self-determination
•	March - Last elected Indian Affairs Council
1992	Framework agreement with Department of Indian Affairs
1994	Empower Elders Council
•	Lheit-Lit'en Act invoked

This situation persisted until 1991. A decision was then made to lobby for a change in Section 74 of the *Indian Act*, relating to the election of chiefs. The Band decided, as one of the first things the elders want rid of, that there will be no more elections. The current position of an elected chief is an artificial position. It is a government chief. It is a chief who is put in place to satisfy the requirements of the *Indian Act*, that is, to manage the Band on behalf of the federal government's Department of Indian Affairs. Over the years, this practice has created problems and has fractured Native communities. It has created bad feelings, bad blood, dissension, and competition amongst various families. This particular community has suffered greatly. Many chiefs were elected with a one-vote majority. The chief was elected for only a two-year term, which meant that, by the time he might be expected to be good at his job, he might be bounced out if he weren't quite good enough or someone else might be elected.

The elders decided to eliminate this kind of internal competition and the accompanying bad feelings and fracturing of the community. They wanted to go back to traditional methods, which do not include electing a government chief to oversee and implement rules and regulations not of their own making. Effective in 1991, the position of chief is expected to operate within band customs. We are now in the process of developing a framework agreement with the Department of Indian Affairs which we hope to present and then sign in 1992.

In 1994 the community will operate through the Council of Elders. Given what has happened in the community over the years, the elders themselves have stated that they are not ready to operate as a council for the community. They have lost that ability as a result of residential schools, alcoholism, and various associated abuses. Since the Council of Elders was formed in 1990, the community has been involved in training its members to take their rightful place in the community. The elders are also training themselves. Part of that process is trying to define what was meant by various categories that would lead up to a sense of nationhood.

The first question I asked was why a Lheit-Lit`en justice system as opposed to the existing system or some other kind of system? The answer from the community was that they wanted to establish an aboriginal way of life and to begin the process of determination. Not self-determination, but determination. To re-establish the people with the Creator. To maintain the stewardship with Mother Nature. From that point, I spent a number of months in the community trying to understand what was meant by relationships to the Creator and Mother Nature. These concepts were often used in the community but it was apparent that the concepts were used fairly loosely. They hadn't defined the concepts for themselves at the end of the twentieth century.

Then we started to create a structure. It wasn't totally clear if they were going to go back to purely traditional government, however that was defined, or some mixture of traditional and contemporary models. There were arguments for a mixture of contemporary and traditional models. This was particularly noted in the area of justice, where the community assumed that they would not be able to run their own justice system for a long time. The reasons for this conclusion were often related to jurisdictional problems. For example, what do you do when a non-Native commits an offence within a Native community? What do you do when a member of a community commits an offence outside the community? Those types of jurisdictional problems. For some time, discussion was bogged down. We got bogged down because we were asking the wrong questions. At that initial stage, we were still asking how Lheit-Lit`en fit could fit in. Through a series of discussions in the Council of Elders, the point was made that it was not a question of fitting in. Rather the issue is re-establishing the community in terms that reflect that community.

At that point, the discussions moved to dealing with traditional concerns again. The Creator was put at the top of the structure for a simple reason. Without everything operating through the concept of the Creator, it made no sense to talk about Native justice. Within the notion of the Creator is Mother Nature, which involves the universe, the stars, the earth, and all things animate and inanimate. This point becomes extremely important when we start talking about land and claims that are going to be made for traditional lands. It is not a question of simply wanting to acquire a particular geographic territory and ending up with some form of ownership. It is not ownership that is being looked for. It is not ownership that is being defined. What is being defined is not just the relationship between nature and those people who are sustained by nature. There is, in turn, the issue of sustaining nature itself, because, without that reciprocity, things are fractured once again.

We know that we all coexist and depend on this coexistence for the survival and preservation of nature. In the Carrier language, human being is a word that means "those who live in harmony with nature." Pure and simple. I asked who, then, are those who don't live in harmony with nature? The response was simply that you would not be a human being and that there is no word for non-human beings; they were simply people who were not part of the community. They were out there somewhere.

Carrier culture defined human beings as those who maintained the life cycle of Mother Nature; they are thus one with the Creator. For that reason, any structure that deals with government and justice within the Lheit-Lit`en Nation and Carrier Country has to start with that reality of the Creator of nature in close relationship with human beings. No separations.

At that stage the discussions turned to the Council of Elders. The community ran into some problems defining "elder." Lheit-Lit`en in particular is a community that has very few traditional elders since most people are under the age of thirty. The traditional definition of elder, as a person over the age of sixty-five, a definition that works for a number of BC tribal communities, simply wasn't appropriate for Lheit-Lit`en. So, at that stage, they decided to define an elder as someone over the age of fifty. An elder is further expected to fulfill these roles in the community: to maintain the life cycle in relation to the Creator; to ensure the preservation and perpetuation of the Lheit-Lit`en way of life; to interpret and give spiritual guidance; to assume the inherent responsibilities of the caretakers of Mother Nature; to live traditionally and pass on traditions; to assist in the development of laws; to provide guidance to preserve both Mother Nature and the community; to arbitrate amongst community views; and to participate as a facilitator of the community's history, culture, and values. In these ways, the elders ensure and assert sovereignty over the territory. They also symbolically represent the historical connection to the land and nature as emphasized by the traditional territories. In short, one is an elder by being, acting, and participating in the community.

Since the elimination of the position of elected government chief was going to be a reality, the discussion then focused on how to reclaim and develop a traditional form of government. The decision was made to develop the position of traditional chief. A traditional chief, however, is not the same as an hereditary chief. Hereditary chiefs are attached to houses and clans within Carrier Country, but have not acted in this capacity for many, many years. The elders of Lheit-Lit`en decided that they that did not want to re-establish the hereditary chiefs structure of government. They wanted to develop what they refer to as a traditional chief, who was defined as the speaker for the Council of Elders. This person is not necessarily an elder but can be. The traditional chief is also the peacekeeper, ensures the

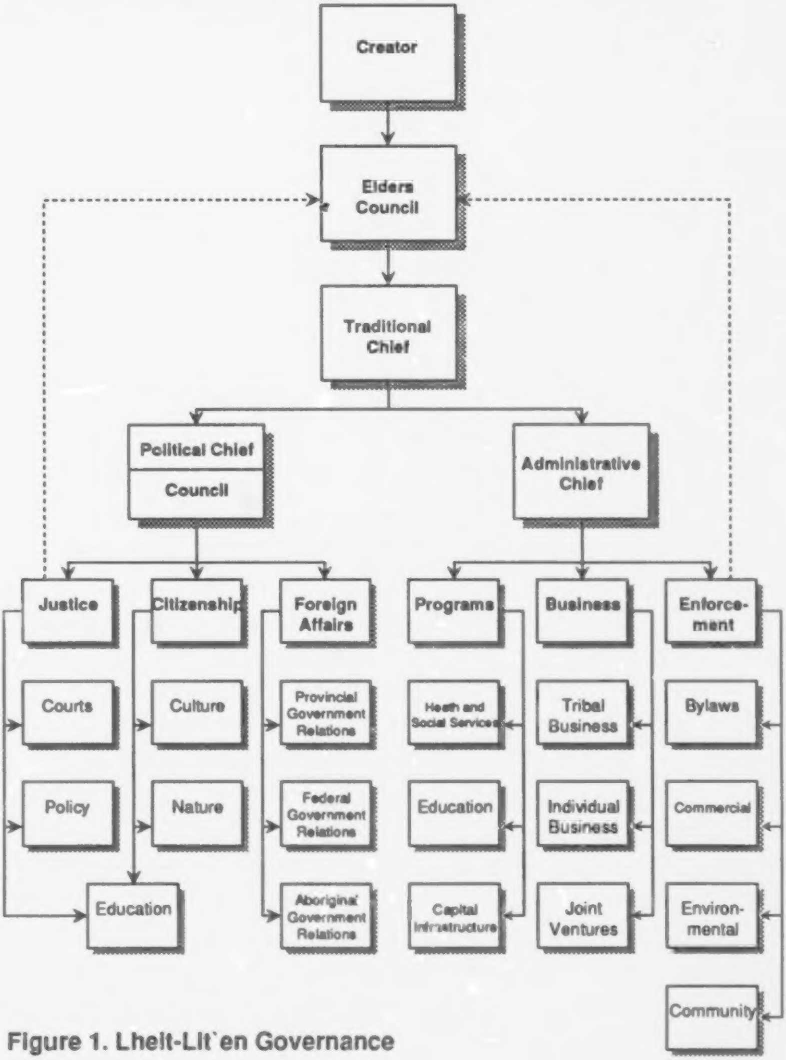

Creator
Elders Council
Traditional Chief
Political Chief
Council
Administrative Chief
Justice
Citizenship
Foreign Affairs
Programs
Business
Enforce-ment
Courts
Culture
Provincial Government Relations
Heath and Social Services
Tribal Business
Bylaws
Policy
Nature
Federal Government Relations
Education
Individual Business
Commercial
Education
Aboriginal Government Relations
Capital Infrastructure
Joint Ventures
Environ-mental
Community

Figure 1. Lheit-Lit`en Governance

continuance of the Lheit-Lit`en way of life, acts as the defender of the territories, and is chosen by the Council of Elders. There are no elections.

Several criteria were set for traditional chiefs, including practical experience in all facets of the traditional and contemporary life of the Lheit-Lit`en and advanced education and training. These criteria were selected because the Lheit-Lit`en Nation is both urban and rural. (A large percentage of the Lheit-Lit`en live off-reserve in the city of Prince George.) It was considered important to ensure historical continuity for the Lheit-Lit`en as a whole and to avoid artificial separations between rural and urban, and Status and non-Status Lheit-Lit`en.

Citizenship and the requirements that must be met to be a member of the Lheit-Lit`en community were also discussed. To be a citizen of Lheit-Lit`en has nothing to do with being a Status or non-Status Indian, because here we are not dealing with the *Indian Act*. Rather citizenship is a community decision about who is a contributing member of that community. This decision may also include giving citizenship to non-Natives who are married to Native members of Lheit-Lit`en; the elders argued that such people should not be stopped from fully participating in the life of the community. If they contribute to the community, they should become of the community.

The position of traditional chief has no defined tenure: the chief will have a very short life or long life, depending on what he or she does. That decision is strictly up to the Council of Elders and rests on the response of the community and the Council of Elders to the traditional chief. The existing position of the elected government chief was divided into two roles: an administrative chief and a political chief with a council. (See Figure 1.) Discussions became interesting at this point because the administrative chief is not part of traditional structures: the role represents blending traditional and contemporary practices.

Chief Quaw refers to the administrative chief as the Chief Executive Officer of Lheit-Lit`en. We are going to hire the best person we can find for the position. He or she will be chosen on the basis on administrative skills and can be a member or non-member of the Lheit-Lit`en Nation. The position will be filled by advertisement based on a job description; the person will be selected by the elders with the advice of the traditional chief.

The position will require senior administrative skills and training. Its responsibilities will include day-to-day administration and planning, including organizing and directing the administrative portfolios of programs, business, and enforcement.

The political chief and council will run the day-to-day political affairs of the Lheit-Lit`en Nation. The political chief is chosen by the Council of Elders on the advice of the traditional chief; the counsellors will be chosen the same way. The role of the political chief is to oversee the portfolios of justice, citizenship, and foreign affairs, which includes relations with the provincial and federal governments as well as other tribal nations. The tenure is for five years; after the first term, the political chief must have served on the Council. The justice portfolio includes the court policy section. This is not a contemporary non-Native court system. Rather we are talking about the Council of Elders serving as the court.

The objective is to assume complete control over justice at some future date, perhaps by 1994. We have no illusions that the federal government is going facilitate this. It is not going to happen easily. We are moving ahead on several fronts in the justice area, which also includes enforcement. In terms of the environment, the Lheit-Lit`en have already gone a long way toward that goal by setting up an Environmental Impact Assessment Centre within the Nation. They have the approval of both the federal and provincial governments so that all economic activity on traditional lands, including forestry, mining, and guiding, must go through the Environment Impact Assessment Centre.

The plan is to move increasingly into non-Native criminal law and civil law. The initial approach will be through local municipal by-laws, environment-related matters, and internal commercial activities. The approach will then expand to include external commercial activities.

The intent initially is to engage in joint ventures in the justice area. We hope to develop increased control over criminal justice issues through community involvement. While that aim can be met on some levels now with the approval of the court, we hope that this involvement will become more clearly defined.

Perhaps the most important issue at this time is land—because without defining one's territory, there is no nation. A community can be self-sufficient only with its own economic base, energy, and resources. Without an economic base, there is no relationship to nature; without the relationship to nature, nothing will have changed.

Land claims are being approached in two ways. First, there are general claims for the traditional territory as a whole. Unfortunately, at this stage, this issue will likely be addressed as a constitutional problem. The courts, certainly those of the province of British Columbia but also the Supreme Court of Canada, are not likely to define control over traditional territories in a way that the community would like. The Lheit-Lit`en argument is that they are not seeking "ownership" (in the non-Native sense) of the traditional territories which are now owned primarily by the Crown. (The area is basically an unpopulated large wedge that runs from Prince George to the Alberta border. The population is in some parts of the territories; the rest is for the most part Crown land.) The current negotiations at the provincial government level are designed to achieve control over economic activity on those Crown lands. Thus far, approval has been given for control when it involves particular environmental issues. But we are not getting a pleasant hearing when it comes to control over determining what happens when the corporations make a move. That is particularly true of the forest companies that have been clear-cutting that area. It is really quite horrific what has been happening to the resources in the area.

The second part of the land claims process involves specific claims. Since the Native peoples have been under the fingers of the federal government and Department of Indian Affairs, there is no trust left. Any bond has been completely broken. For example, Lheit-Lit`en Nation has four reserves. IR No. 1 used to be 1,400 acres and is now downtown Prince George. In 1911, that 1,400 acres was sold by the Department of Indian Affairs to the Grand Trunk Railroad for $125,000 without the permission of the Band. (The Band refused to sell it but the government sold the land anyway. Only a year before, another consortium had offered $1.5 million for the same area.) The Department of Indian Affairs and the Grand Trunk Railroad made a sweetheart deal. That's one of the specific claims that is going to the courts.

Legal counsel for the Nation is arguing that the province of British Columbia is applying laws that are unconstitutional to Native people. The law states that, after thirty years, Native peoples cannot have a claim against the government for reaching a settlement. The constitutional argument of the Nation is that, if this law is only applicable to Natives in BC, then this is not right. The thirty-year extinguishment clause had been initially put in place back in the 1950s. It was designed to prevent miners who had developed Black Lung disease as a result of their work from bringing claims against the mining company. But this same law is now being used to stop claims in the case of IR No. 1. The Lheit-Lit`en do not want downtown Prince George back because there are too many third party interests involved. They simply want the difference between the original offer of $1.5 million and $125,000—about $1 million compounded over sixty years. Compared to the value of Prince George, that's cheap.

The land issues are being approached as both *general claims* for control over the traditional territories and *specific claims* where it can be demonstrated that the federal government did not operate from a position of trust and in fact disregarded the best interests of Lheit-Lit`en. For historical reasons, the Lheit-Lit`en have decided that they do not want to enter into an arrangement with the federal and provincial governments, since they will be at the bottom. What they are seeking is some form of sovereignty association.

While discussing these issues, the elders, chiefs, and council decided in 1990 that the community needed to prepare to heal itself. There were a lot of problems in the community. We started with community education based on survey interviews in which the community identified problems and suggested solutions. These problems included family issues, unemployment, poverty, racism, discrimination, drug and alcohol abuse, child neglect, child abuse, sexual abuse, and jealousy. Once the issues were defined, a series of community meetings focused on each issue to solicit feedback; this process also made public many issues and feelings that had been kept private. Family violence was no longer a private issue. It was now a community issue.

Jealousy, a big problem within the community, was viewed as the cause of much feuding and fighting amongst families and resulted in bad feelings in the community.

Bingo has also been singled out as a significant problem leading toward child abuse in the community. Frequently, family members go off and play bingo all night. The kids will be left to run around. After bingo, the parents go to the pub. Outside of Native communities, when you talk about bingo as a problem, people laugh. But bingo is a very real problem, particularly in those communities nearby large, non-Native communities that offer large bingo halls. These halls take in millions of dollars and much of this money is out of the pockets of people who live on welfare on reserves. This creates incredible economic and social problems.

Bingo becomes one of the tools used in speaking to people about what it means to be a fully functional, responsible member of the community. The discussion becomes part of the sharing-teaching process.

In early 1991, the elders held a community meeting to address these issues. The whole community got together, including the two major family factions, and reached agreement to operate as one. They decided to adopt band customs and, among other actions, eliminate the election of the band chief. The Council of Elders is now trying to define very explicitly what is meant by Lheit-Lit`en justice in these issues. We are not talking about justice as a category separate from others, but justice as part of all categories, whether related to young children or the elderly, economic development and land, the relationship with nature, and relationships with each other.

The Nation is also developing the infrastructure for community foster homes so that if a child must be removed from an abusive situation, he or she will be placed in a foster home in the community. The key point is that the child stays within the community. Until now, children in crisis were generally taken away and this practice didn't address the needs of the child nor the family.

"Native" persons are those who are members of the community. There are currently four non-Natives married to Natives who live in the community; the Band is giving them full participatory rights. The only place where their rights are not recognized is with the federal Department of Indian Affairs. They don't recognize their rights because they are not treaty Indians. But the Band has said that, as far as they are concerned, they are members of the community. It doesn't matter what the federal government says. In terms of what goes on in the community, these non-Natives are full members of the community.

The Lheit-Lit`en long-term goal is to become economically self-sufficient. Over the past two years, they have expanded their economic bases significantly. They've started a modular housing factory to supply homes to their community and other Native communities. They have opened up a sawmill which, at the moment, is a joint venture with a large company from Prince George. They are also developing three other businesses plus a salmon enhancement program that brings in $2.5 million a year. The Environmental Impact Assessment Centre also brings in money. They have entered into partnership with the city of Prince George, where they have developed a Carrier village. They are opening up a fish camp, making it part of a tour bus system. Visitors can travel to the fish camp and watch how the Lheit-Lit`en smoke fish. By 1993, when construction is complete, they will be able to travel by jet-boat from the fish camp down to the Carrier village. The community has actually just turned around in terms of economic activity and economic potential.

At the moment the elders get together every two weeks to sit and talk. In talking about the history and traditions of the Lheit-Lit`en people, about what was done, what worked, what didn't work, deep rooted memories start popping up. This process is part of their training for taking on responsibility as carriers of culture. Other community members are also involved in looking to the elders for that history, for that return of culture. The elders themselves, as a result, are increasingly taking on their role as community leaders. They are training themselves, with the community, to reclaim their lost role in the community.

One interesting point is that the sense of culture and the sense of history changes. The more you articulate, the more you express, the more you interact with it, history sparks other memories and connections. Then it grows and becomes living. It is not simply a matter of reaching back into some undefined period of history, grabbing some "traditional culture," and putting it down today, saying, "Hey, we're going traditional." What is meant by traditional is reawakening and re-creation after the influences of more than 100 years. It becomes a living history.

A first question I asked of the Lheit-Lit`en was their definition of the Creator. The answer depends on whom you talk with in the community. Many elders in the community, brought up in the Catholic religion, have a very strong connection with the Church. For that part of the community, the Creator is very much in the tradition of Catholicism—with some curious quirks, but still very much within that tradition. Other members in the community, particularly the young people, had turned their backs completely on western religion. Their conception of the Creator is best enunciated by Chief Peter Quaw. His sense of the Creator is not in the terms of a god, but of a spirituality that emerges from an emotional and philosophical synthesis and recognition of a new relationship to others, the community, and nature. That totality is the Creator and no one person or group has an exclusive right to speak for the Creator. In effect, the younger people are returning to a concept of spirituality that existed prior to the arrival of the Church.

This presentation is a joint publication by Erling Christensen and Chief Peter Quan with thanks to the help given by the Elders of Lheit-Lit`en Nation.

TRIBAL COURT IN ALASKA

David Blurton

The creation of a system of tribal courts in Alaska villages would reflect Native values and Native sovereignty. There is a broader reason for promoting tribal government: this approach can provide a form of local government that is more suitable for rural communities. These communities may have non-Native as well as Native residents who would benefit from the establishment of tribal governments. Under the Alaska state system, municipalities are urban-oriented institutions, creatures of state law. The problems associated with the principle of "the majority rules" can be demonstrated simply by looking at the House and Senate legislatures for the state. In both cases, the three major population centres of Juneau, Anchorage, and Fairbanks combined can control both houses. The *Alaska Native Claims Act* recognized 211 native villages. If they try throwing their weight against the urban areas, the rural areas lose.

Fish and game management is also involved. The federal government mandated that the state of Alaska manage fish and game with a rural subsistence preference. However, the entire state wanted to regain control of fish and game regulations. To do that, they felt they had to have an amendment to the Alaska *Constitution* that would allow a rural subsistence preference. But in 1989, the Alaska Supreme Court ruled that this rural preference was unconstitutional according to the state's *Constitution*. As a result of this decision, the state lost regulatory power over fish and game in approximately sixty per cent of the land mass in Alaska.

With re-apportionment based on the 1990 census, indications are that the rural areas will lose more representation. So there is even less likelihood that the rural areas will have more power in the state legislature.

Alaska has two basic types of municipalities: *general law* and *home-rule*. The general law municipalities are what we call our first- and second-class cities; they only have the powers that are set out by state statutes. The home-rule municipalities are more flexible. They are construed as having all powers included in their charter that do not conflict with or are not prohibited by state of Alaska statutes. An example of how these statutes can infringe upon a local community's attempt to regulate itself occurred when the city of Anchorage tried to enact a *Driving While Under the Influence of Alcohol Act*. The provisions of this proposed act conflicted with the state statute and was thus not allowed. In rural areas, there are many more instances where a statute that might work well for the rural community comes into conflict with the state statute.

Municipalities are subject to state statutes, federal statutes, the Alaska *Constitution*, and the US *Constitution*. Tribal governments, on the other hand, are subject only to federal statutes. Tribal governments are not subject to the US *Constitution* because the US Supreme Court has held sovereignty pre-existed the *Constitution*. They are subject to federal statutes, the two most important being the *Indian Civil Rights Act* and *Public Law 280*.

The *Indian Civil Rights Act* is like a bill of rights and also proscribes certain activities for the tribal government. *Public Law 280* is a jurisdictional law that includes criminal and civil areas. Although the grant of jurisdiction is exclusive, the courts have held that tribal criminal jurisdiction is not included, even over tribal members. So, in Alaska, tribal governments do not have criminal jurisdiction over their own members.

Because tribal governments are not subject to the state statutes, the Alaska *Constitution*, and the US *Constitution*, they can be more flexible and respond to problems in a manner that would be unacceptable in an urban area but might be completely acceptable to the local community. Two examples, the first from western Alaska. The community was a dry community. In it, the consumption or possession of alcohol was against the law. Obviously, importation was against the law. But they still had problems with alcohol. The only way into the community was by air. The community decided to take things under control. They began to search every aircraft and all of the people on it and their belongings. The state said to the community, "You can't do that. It's unconstitutional." Indeed, there is no argument, under the constitutions, that this practice constituted an unreasonable search. The question is whether a tribal government can do that. The *Indian Civil Rights Act* actually has a proscription against unreasonable search. However, the US Supreme Court held that interpretation of the provisions of the *Act* must be in light of the traditions and customs of the village or the tribe. Furthermore, the most appropriate forum for hearing such issues is the tribal court, if one exists.

So there is room for play there. Does this situation constitute an unreasonable search or not? The answer depends to a great extent upon the traditions and customs of the village. There is also room for argument. It may be held to be reasonable that the community should have the right to try to stop alcohol problems. Obviously, it's a severe approach but the community members felt that the problem was so severe that they needed this approach.

The second example again concerns alcohol and involves a village in the interior part of the state which also felt that alcohol problems had become severe. This community was dry but their approach to the problem is different. If a person was found with alcohol or they were found drunk, they were banished from the community and given a plane ticket to Fairbanks.

For a first offence, they were banished for six months. For a second or third offence, they were banished from the community permanently. This punishment is obviously very severe but it has not been challenged by the state of Alaska. This particular village has always claimed and maintained tribal sovereignty. At one time, they were on a reserve and perhaps that is why they have been left alone. There is a feeling that it is for the local community to decide. My point is that communities have the flexibility to take this type of action.

Now, turning to the system of tribal courts. In Alaska, there is no prohibition on establishing tribal courts: any tribal government can have a tribal court. However, under the state system, municipalities do not have the option of having a municipal court. The Alaska *Constitution* sets out a unified court system that rules out municipal courts. District courts are the lowest level of the court system. Magistrates work with the district court. They're not in every village. And there are even fewer district court judges. In many villages, no judicial system of any kind is present. This fact results in a number of problems.

Justice may come in from the outside. The judge, prosecutor, and public defender may all fly into a village on the same plane, talking with each other, spending the night in the same place, and leaving together. To the villagers, they seem "buddy, buddy." It does not appear that justice is impartial. I'm not suggesting that the judge, prosecutor, and public defender are doing anything improper. But the *appearance* to the villagers is that everything is predetermined. They fly in, make decisions, and then leave. The other option is to fly accused persons out of the village. In such situations, they are also subject to a justice system based outside the community.

These scenarios are not desirable. At the same time, how can the state afford to have representation of the judicial system everywhere? The tribal courts exist on a volunteer basis. The judges are all elders from the community. Given the costs of having a magistrate or a district court judge full-time in the villages, the tribal courts are a viable, cost-effective alternative. Village tribal courts could handle expeditiously many of the issues that arise at the local level.

The state court system operates under very strict procedural guidelines that may be necessary in an urban environment. In rural areas, the human resources aren't available to operate a complex system. Perhaps, because of the small numbers, integrity of the process can be maintained without strict procedures. These things all need to be considered.

Tribal governments can assess fines up to $5,000, a maximum amount limited by the *Indian Civil Rights Act.* As noted earlier, tribal governments do not have criminal jurisdiction. So that is a definite limitation on the tribal court. On the other hand, first- and second-class cities can enact ordinances that carry a maximum penalty of only $1,000. The question is when is an act a civil concern and when does it become a criminal matter. I'm not sure how that question would be answered. But there's a need for flexibility: creative ways of regulating activities need to be developed so that offences are not inappropriately defined as criminal.

Much more research is required on how tribal governments might better meet rural needs. Municipal governments should not necessarily be abolished. Municipalities look primarily to the state for funds to provide local services. Villages in rural Alaska need all of the economic assets they can garner. So whether a municipality or a tribal government, they will look outside for their source of funds. Villages need both sources of funding—state and federal—to provide services. They need to realize that they are one community and need both funding sources. Work it out. Look at what one system can do better than the other.

If communities explore this alternative, they can better serve their Native and non-Native residents. The latter should be drawn into the community and made members for voting purposes—because they participate in the community. One of the villages in my region dissolved its municipal government and, by doing this, lost $56,000 in annual revenues. The members of the village were able to do this because there were bingo reserves of $100,000 a year. They made the decision to operate without state funds (although there is an ongoing debate over the acceptability of gambling and whether bingo should be used as a revenue source). Other villages were going through the dissolution process at the same time, but they abandoned the attempt because they felt they could not afford the loss of state revenue. My position is don't abandon any source of revenue.

While I am arguing for tribal governments, I also have to add that it is unclear if they will ever be recognized in Alaska. If you went through very technical legal reasonings, you would conclude, "Yes. Alaska Native villages should be recognized as tribal governments, as sovereign governments." There have been no treaties. You have a tribe or a group possessing all of the sovereignty that a nation would possess. Then look at how much the US federal government has taken away. While it can be argued that a great deal of sovereignty does exist, no court decisions support that position yet.

It is difficult to tell how many tribal courts in Alaska are actually functioning. I have seen situations where a tribal court is said to exist but seems to be inactive. There is a tribal court in Sitka operated by the community association. The interior of the state seems to be more active in setting up and operating tribal courts, although they tend to restrict themselves to child welfare cases, including child custody and child abuse. Given the confusion over federal vs. state jurisdiction, I am not certain that the villages know what their rights are. The tribal courts in the interior areas are on the leading edge. Their jurisdiction hasn't been questioned. I actually suspect that non-Natives would also prefer to be under tribal jurisdiction rather than under state law. They may view the tribal procedures as more favourable to them.

The *Indian Child Welfare Act* causes some confusion in Alaska because it outlines a procedure for states that want to obtain tribal court jurisdiction for child welfare. However, it has been argued that tribal courts should already have jurisdiction because it is a civil matter. The matter is also related to the internal affairs of the community, which have always been under the jurisdiction of the tribal group. So, the statute itself confuses the issue. Although the process for having tribal court jurisdiction recognized is supposed to be reviewed by the Bureau of Indian Affairs, the Juneau area office does not even have a procedure for evaluating them. They have never had a request for jurisdiction submitted by a community. The position of the villages is that they do not have to be granted jurisdiction and they are not going to apply for it. The state of Alaska now has drafted a proposed tribal-state agreement for *Indian Child Welfare Act* cases. The state does not want to have 200 or so separate agreements and so prefers a single agreement for the whole state.

More and more groups are taking a proactive stance. In Alaska, many of the attorneys for non-profit Native associations are saying, "We don't know whether you will be recognized or not. But go out and assume you are going to be, and start developing your tribal organizations." My argument has always been that, if they know what the federal law says, use that. There are case law precedents that the associations and their attorneys can use that will assist them in being recognized. If they don't use them, chances are they will not be recognized.

The non-Native community has completely lost its connection with the environment, with its people. We have become fractured. Hope for the future does not lie in the non-Native view of the world. It lies more with Native society's view of the world. There is the only place where the relationship between what we are and what we are part of is clearly articulated.

RESOURCE READING

Griffiths, C.T. 1989. *The Community and Northern Justice*. Burnaby, BC: The Northern Justice Society, Simon Fraser University.

4

DENE TRADITIONAL JUSTICE

RESOURCE PERSON

Joan Ryan, Principal Investigator, Dene Justice Project, Northwest Territories

This summary of the Dene Justice Project outlines its development, purpose, methodology, and workplan.

BACKGROUND

The Dene Justice Project was prompted by dissatisfaction amongst the Dene with their experience with the current justice system and by a willingness on the part of the Northwest Territories Justice Department to make changes in the way justice is administered to the Dene. The Project is based in Lac La Martre, a community selected on the basis of local interest and after consultations with chiefs throughout Denendeh. Project funding is provided by the Territorial and Federal Departments of Justice, the Social Sciences and Humanities Research Council of Canada, the GNWT Department of Culture and Communications, and Canada Employment and Immigration. Support in kind is provided by three project partners: Arctic

Institute of North America, the Dene Cultural Institute, and the Lac La Martre Band Council.

PURPOSE

The purposes of the Dene Justice Project are to document traditional Dene justice to determine what laws (methods of social control) existed, how they were enforced, how breaches were dealt with, and to what extent traditional justice mechanisms are still practised; and to leave employable people in the community by training local researchers in interviewing skills, translation, Dogrib literacy, and computer skills as well as upgrading English literacy.

The end goal of the project is to provide complete and accurate information on traditional justice that can be used by both government and Dene in determining how justice should be administered for the Dene in the future. As well, the research results will satisfy some of the demand for information suitable for the cross-cultural education of the judiciary and others involved in the justice system. The results of the Dene Justice Project will also increase the available documentation on Dene culture and traditional knowledge.

METHODOLOGY

The methodology used for the Dene Justice Project is participatory research. It is characterized by the community having ownership and control over the direction and activities of the project. This is exercised through a Community Advisory Committee that meets monthly. It is made up of the Dene Band Chief, four elders, and hamlet and youth representatives. The members provide significant assistance in personnel matters and in ensuring that the project operates in a culturally appropriate way. Central to the group dynamic process used by the project is consensus decisionmaking by the Community Advisory Committee and amongst staff researchers, principal investigator, and project director.

A second committee is a technical one, composed of representatives from territorial organizations and government departments with a direct interest in the goals and results of the Project. Its responsibility is to provide advice on the project direction and its relevance and potential for application.

WORKPLAN

The Project began with an intensive three-month training period. Data collection, through interviews with elders, began in May 1991, along with translations. Interviews on renewable resource law are now complete. Interviews on family law are underway and will be followed by research on political social structure and decisionmaking. An informal, conversational approach is used in the interviews, following the development of Dogrib terminology for the concepts central to each interview theme. Training will continue to account for approximately one-third of the researchers' time until completion of the data collection and translation phases in fall 1992.

Research results will be verified with elders from three neighbouring Dogrib communities, as well as in Lac La Martre, to provide a regional perspective to the research. The draft report will be presented and discussed on a Dogrib regional basis and revisions made prior to the writing of the final report, to be completed in spring 1993. Upon completion of the project, the interview tapes and translations will be catalogued, and, with the approval of the elders involved, copies will be made available to schools in the Dogrib region and the Northwest Territories archives.

5

CURRENT INITIATIVES ON THE SANDY LAKE RESERVE, ONTARIO

RESOURCE PERSONS

Jonas Fiddler, Chief, Sandy Lake Reserve

Josias Fiddler, Sandy Lake Reserve

This discussion addresses issues related to the delivery of justice services to the Sandy Lake Reserve and presents the initiatives that the Band has taken to develop community-based justice structures and programs.

INTRODUCTION

Consider for a moment the scene on court day, when the sound of a twin-engine Beechcraft on floats can be heard a full five minutes before it can be seen. People would rush to the dock, to see it come in. To see who was in the aircraft. After the aircraft docks, the court procession climbs down onto the float and the dock. Ladies first, of course. Out come the court reporters, and then the rest disembark. Notice the judge or the justice of the peace, the Crown attorney, legal aid or defence lawyers, and the Native courtworkers.

They travelled together in the same aircraft. The people wonder, "Will these officials, who travel together, also work together to take our people away from us?" It seems that way. The defence lawyer, the Native courtworker, see each misbehaver for a few minutes, if they have time. Then court begins.

During the few minutes before the court began, the defence lawyers were supposed to find out about the cases and their clients. How could a lawyer even begin to understand? He may have taken anthropology courses in university, but by no means does he understand his clients. And the clients, of course, don't understand him. He is a friend of the Crown attorney, who's trying to get them sentenced and taken to jail. In later years, the defence lawyers and the courtworkers arrived the day before the rest of the court party. This change gave them a little more time to see their clients, but, in reality, this doesn't benefit them very much. A few hours is not sufficient to deliver justice to our people.

COMMUNITY-BASED JUSTICE

Over the past few years, we have been developing our social programs and local economic development initiatives as part of a process of regaining control of our community's future. An essential part of our move toward autonomy is the control of justice in our community. We believe that a justice system must be suited to the social and cultural realities and aspirations of our people. It cannot be a foreign system, irrationally imposed.

In the past two years, we have had continuous contact with the Attorney General's Office in the province of Ontario. This office funded the Elders Council, as a demonstration project, from April 1990 to March 1991. The Elders Council was created and established jointly by the Sandy Lake First Nation and the Ontario Ministry of the Attorney General. The Sandy Lake First Nation selected the elders who had been recommended by the people of the community. This council consists of three individuals, two men and one woman. These elders are, of course, mature people who have grandchildren and who have experienced the trials of life. They were selected because of their wisdom, understanding, and knowledge of social conditions.

The elders began to gain a better understanding of the Canadian justice system and their training is ongoing. The training is in areas such as the Band by-laws, provincial liquor and highway laws, the *Indian Act*, responsibilities of various court personnel, the *Young Offenders Act*, other federal and provincial laws and court terminology. One problem in Sandy Bay is that these elders have never gone to school. They can't read English and they don't understand English. So we have to translate. We have to translate almost word-by-word what's happening in court, and sometimes that becomes a problem, because much legal terminology just can't be translated.

The Elders Council is not a traditional system, but one that blends customary justice with mainstream Canadian justice. It is a community-based system. The customary justice system of Sandy Lake stresses mediation, conciliation, and restitution. The offenders are handled within the community and are supported in overcoming their problems. The system isn't "bad guys" vs. "good guys." It isn't "We are going to get you out of here and throw you away." Rather it is "You are part of us. You may have misbehaved, as we all do to some degree. If you leave, part of the whole leaves, and that is not unacceptable."

Of course, we cannot divorce our community entirely from mainstream Canadian justice, because they must complement each other in bringing real justice to Sandy Lake. The first concern of our elders in court is to provide discipline and teach those who misbehave the Great Laws of the Creator. The way that happens is through respect. These elders have not only earned the respect of the people, but they have cultural respect. One elder is a grandmother, and, of course, grandmothers are greatly respected in any Native community. The elders do not get involved in serious cases. To date, there hasn't been a case of murder or rape. Many cases that arise in the community do not come to court. Either the Band Council or the elders will deal with them.

Before and after court, the elders make themselves available to meet with the grandparents, the parents, and families of the misbehavers, who usually have more respect for their families and other elders of the community than for members of the court. For this reason, an elders council can be more effective than the regular courts.

For instance, a few weeks ago, a young man was arrested and charged with a liquor offence. He said he could beat the charge and thereby opened up the controversy of liquor control on the reserve. In Sandy Lake, the general consensus was that the reserve should remain dry; the Band Council passed a resolution supporting this agreement. Now, no alcohol is allowed in the community.

Late at night the young man called me up and said, "What can I do? I know I can beat this charge." I answered, "Just think for a while. You have your mom, who is always sick. Your father's got a heart problem. And you have three or four brothers and sisters who live with your parents. Every time someone in the house starts drinking, your dad's heart problem gets worse. And every time your people start drinking, your mother gets worse. What do you want to do? Do you want to challenge this liquor charge, or do you want to abide by the wishes of the community?" He realized his responsibility and accepted the fact that he had done wrong in the eyes of the community.

The misbehaver could have gone to jail for that offence. In jail, he would have been even more isolated. More defiant. And more self-centred. He would have had a much harder time joining the community when he got out. In fact, he may not have come back. But in this case, he submitted himself to the wishes of the community. He felt shame and he learned about responsibility.

As as off-shoot of the demonstration project in Sandy Lake, we appointed five people we call peace officers. The five officers were recommended by the Band Council. In the past, in the 1940s and 1950s, one or two people were always patrolling, trying to get our people to behave themselves. We didn't call them band constables or police officers. Now, the peace officers keep the peace in the community. We have asked them to enforce the community by-laws, the curfew, and the liquor and other by-laws that we have instituted. The band constables and the members of the Ontario Provincial Police Northwest Patrol are very supportive of the peace officers, who, in essence, represent the community and lend credibility to the policing effort. This has had a tremendous influence on the success of policing.

The annual music festival for our young people was one reason that the peace officer program began. Each year, that music festival grows and grows, and 1,500 young people came to the festival in 1990. It was decided to have the young people police themselves. During the last festival, thirty young people volunteered to act as security for the music festival. For the entire week, not one liquor charge was laid against the young people. (We had a few liquor charges but they were against older people.) Because of the success of the security program during the music festival, we decided to implement it all year round.

In Sandy Lake, there is a positive social dynamic that bonds our people together, that prevents or solves problems that otherwise might lead our people to court. This spirit is what we would like to keep and foster. In Sandy Lake, it is not possible to separate one social problem from another. So the solutions must be coordinated. It does little good to remove a person for some offence, then drop him back into the same situation that might have led to his misbehaviour in the first place.

The Elders Council stresses mediation, restitution, and responsibility. The misbehaver can be made to feel needed, and, indeed, everybody involved should feel that they have a part to play and have a stake in the process. We can see the results of this initiative, not in fewer misbehaviours but in fewer repeat offenders. This outcome suggests that the Elders Council is effective in helping people assume their place in the community.

Most charges involve liquor. In 1990, from January to March, seventy-seven charges were laid; April to June, sixteen charges; June to November, thirty-three charges; and from November 15 to the end of December, five charges were laid. From January to March, part of the problem was the construction of a winter road. We had young people with licences drive all the way from our community down south—a 200-mile drive just to get liquor. That created a lot of problems for us.

One way we tackled those problems was to give our peace officers the authority to search the baggage of persons coming into the community. We have asked them to have a roadblock when people enter the reserve. The deal that we made with the people is that if they want to take liquor onto the reserve, they are welcome to do so. But they would be charged. And if they gave us the liquor, they wouldn't be charged. The seventy-seven charges could really have been higher. The people we encountered on the winter road gave us the bottles. It was no problem at all. They gave it to us freely. And there were no charges laid. They gave us the liquor, not because we caught them, but because they respected the wishes of the community.

When the people of Sandy Lake understand and even welcome the justice system into the community, then we will have succeeded, because it will be our system. And not something that is imposed on us by others who don't understand. It will be a system that is fair and responsive. It really will be rehabilitative. It will truly be community-based and become a very useful instrument to help perfect the lives of our people.

It is important to note that the system of justice we are developing at Sandy Lake is not a traditional justice system. It's a community-based system. If it was a traditional system, then the chief would most likely have three wives. Many customs and ways of dispensing justice from the old days would not be effective. In fact, we would probably end up being charged for trying to apply those laws.

What we are trying to do is to create a system to assist people, including victims and offenders. We are not attempting to punish people. We don't use the term "punishment" but rather the term "discipline." The term "plea bargaining" is not used, but discussions do go on. The important point is that, in the community, not much emphasis is placed on trying to avoid responsibility; everything is focused on how to help the person. If everyone understands this, then there is no pressure to plea bargain. If you are recognized by the elders and the community as someone who is receptive to help and wants to take a place in the community, then you don't have to fear punishment. That's the key.

When people are locked into a system where they must go to jail for months or years, then they are forced to get into the game of plea bargaining. Our system focuses on helping the person who is under stress and misbehaving. By doing that, we encourage other people to realize that the person needs help and that, very likely, he or she will not commit the offence again. The conventional justice system has lost its way and does not work as a specific or general deterrence.

Question **Member of Audience.** You stated that you were trying to determine your community's future through social programs and economic development. Can you tell us about your initiatives? What type of social program did you target? I'm interested because Sandy Lake is an isolated community.

Response

Josias Fiddler. The Elders Council works with the band constables, the Ontario Provincial Police Northwest Patrol, the federal alcohol and drug programs, schools, and people from social assistance. Our community is very active and very competitive. Something is going on every night; in fact, sometimes two or three things. Our elders have told us to slow down a bit. On Wednesday, now everything is closed so that people can rest. So many things were happening that we had to do something. We have also made application for a water and sewage system and have constructed a community complex.

Question

Member of Audience. What are the financial aspects of the Council of Elders? Are the elders paid for training and making decisions? Who finances this? The Band Council or provincial government?

Response

Josias Fiddler. Monies for the Elders Council is part of a contract from the Ontario government. We give some money to the elders. People are getting paid $600 per day as consultants down south. There is no reason why we should start paying our elders that much money. We don't actually call what we give the elders "pay" or even "honorarium." Rather it is a gift of appreciation.

Comment

Member of Audience. I work in a Cree community in Quebec. The judge and court party come in on the same plane, eat together in the community, and sleep in the same hotel. Since I work for the Band, I am the one lawyer that doesn't travel with the court party. I don't eat with them. How have you made the judges and the provincial government of Ontario aware of that situation? We've been trying to do so for years. Even if the Crown and the defence lawyers arrive early, they generally have five other communities to go to that week. And if they are late in one place, they may skip a community or hold court at night. How did you sensitize the provincial government and the circuit court?

Response **Jonas Fiddler.** One thing we've been doing in northern Ontario for several years is that all people who are connected or remotely connected to the northern court circuit get together to discuss issues and make recommendations. As a result of these discussions, a number of changes have been made. For example, the judge and the justice of the peace no longer travel with the Crown attorney and the Crown attorneys do not travel with the defence lawyers. They fly separately now. The legal aid people come in two days or the day before court. Many people in the community do not understand the court system or the role of the circuit court personnel, so we have attempted to ensure that at least they do not travel together.

Comment **Judge Donald Fraser, Provincial Court of Ontario.** There is a practical element to this change as well. The provincial government officially requires one ministry to approve all aircraft charters. But, by persistence, we were able to break away from that policy. So my office charters the aircraft we have signed for. We can now start designating our core flights so that we don't have to go on week-long junkets. That gets us away from having the same small group of people together for a week, acting if they are on a holiday instead of professionals going to do a day's work. In the old days, you would cook together, sleep together —there would be a breakdown of the formal relationships that are so important in the conventional court system.

We have to understand that many of the problems that Native communities experience can be solved at the local level. Big government is literally too big. The experience in Sandy Lake shows what can happen when the conventional circuit court shakes itself free and becomes more flexible. Our court is set up so that everyone sits as close as we can in a circle. The person who comes before the court with a lawyer sits facing me and the elders. Then the interpreter and the probation officer sit on one side and the police and the Crown attorney sit on the other side.

No one stands in my court. The person is arraigned sitting down. As the charge is read, he or she sits. The lawyers speak from a sitting position. We go around the circle when we speak; we try to encourage people to speak. Depending on the nature of the proceedings, I sometimes ask if anyone in the room would like to speak and often elders do speak to a particular case. Sometimes the police officer who has laid the charge speaks. So, people have an opportunity to express their feelings during the court proceedings.

Everything that is said is translated. Most of the time the young people who come before the court speak English reasonably well, but we still translate everything that is said. That is done for a number of reasons. First, it makes it clear to everyone that we are a community court and that the court is showing respect for the community and the culture. Second, from a judge's point of view, it slows the lawyers down. They have to speak in very simple phrases. It forces them to think before they speak, making it easier for everyone to understand what is going on. Third, it slows the court process down. The courts, particularly the mainstream courts, have to go at a frantic pace to deal with the many charges before them. At Sandy Lake, we are in no rush. The accused person is important to us. It is perfectly appropriate to sit still and say nothing for a period of time. Sometimes, the most eloquent thing that happens is people sitting and waiting. Sometimes, the accused person is offered the opportunity to speak. Sometimes, we then wait five or ten minutes.

When accused persons are ready to speak, we have seen them struggle to face their feelings. Very often, this moment is when they recognize their situation, reconciling themselves with the elders by listening and responding to them. For me, as the judge, it can be a very emotional thing.

I have had people in court acknowledging for the first time the horrible abuse that happened to them in the past. In one case, a father beat up his son. His son made him very angry. He was able to talk about something that had happened in the past that he had bottled up inside him. He could never have spoken to anyone about this memory, much less his own son. But he was able to do it that day. The son and the father were reconciled in court. And, as a result, the son was able to understand his father's assaultive behaviour.

The court is becoming more flexible and a tool of the elders. That's a big difference. The court is simply a last resort when the elders might wish to invoke the judge's power to send somebody away to give them time to think. Occasionally, people are not responsive to the idea that they should go away for residential alcohol treatment. They refuse. Yet they are such a problem to the community, there is no other way to get them there except through the criminal court process.

From my perspective as a judge, what is interesting about the Sandy Lake project is that the traditional Native system dovetails with the conventional justice system. It is a seamless continuum. The court needs to do very little. And when the court has to act, that action is not separate but part of the same process. In some cases, individual offenders are so alienated from the community, from the people, that they need to be dealt with by the conventional court. The community then sees the court working hand-in-hand with the elders. So, the process is very much community-based.

In some communities, it is difficult for the leadership to do some things. In some cases, it is a relief for them when I come in as an outsider. The outsider could be a Native; but it is best for an outsider to address some issues. If a community is working well, no court work needs done. If there are one or two people who are creating difficulties and won't respond to the community, an outsider can take action, because for a community member to act might create problems amongst families in a small community.

Even as an outsider, however, I rely on the input of the elders and decisions are reached by consensus.

One of my roles is to deal with white lawyers. I think that is a problem. If you are going to have a completely Native justice system, you have got to keep white lawyers out of it. If white lawyers are going to be there, there have to be better ways of keeping them in line.

To me, the advantage of allowing community control is that we relearn lessons, particularly about how to reintegrate people who misbehave. The crisis in our criminal justice system is that we do a lousy job of rehabilitating people. From my own experience in northern Ontario, I know that many villages do a 500 per cent better job of responding to the needs of the accused than we do. The gains they have made are remarkable.

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6

THE STRUGGLE FOR RECOGNITION: CANADIAN JUSTICE AND THE METIS NATION

RESOURCE PERSONS

Lawrence Barkwell, Manitoba Department of Justice, Winnipeg, Manitoba

David N. Chartrand, President, Manitoba Association of Friendship Centres, Winnipeg, Manitoba

In this workshop, Lawrence Barkwell and David Chartrand trace the struggle of the Métis people in Canada to retain and develop their own legal system. The discussion includes an assessment of the impact of the criminal justice system on the Métis people and future directions.

THE METIS HISTORICALLY

The Métis people in Canada have a distinct history from that of other Native peoples. Very early in Canadian history, representatives were in London, England, petitioning the Colonial Office for recognition of the inherent aboriginal rights of Indians and Métis, which, it was argued, were independent of colonial law. Petition after petition went forward to the Colonial Office. One petition stated: "The Natives of Rupert's Land, whether Indians or halfcasts, consider that, even had the Charter of the Hudson's Bay Company been good and sufficient in point of law, which it is not, it could not deprive them of rights inherent and inalienable in their ancestors and, of course, inherited by them as their descendants. We ask for the procurement of our own land; that the settlers be invested with full corporate rights, having the power of choosing their own magistrates and a voice in the passing of their own laws."

So here you have Métis lawyers in London in the early 1800s petitioning the Colonial Office for their own law-making system and a means of electing their own police. They also asked that provision be made for the independent administration of justice and adequate supervision of Hudson's Bay Company officers. They wanted not only to set up their own system of law-making and apply those laws but also to supervise the officers' actions under their Charter.

The first set of written laws we find are the buffalo hunt rules of the 1840s. The Métis hauled all trade goods back and forth across the prairies and supplied provisions for all commercial activities. Most food was provided to the Assiniboia community by the Métis people. To follow the buffalo, they would go down into what is now North Dakota and Montana, through Saskatchewan, and even as far as west as Alberta. Usually, the Métis were in dispersed colonies. When they went out into the plains, they took as many as 1,200 to 1,500 hunters and accompanying women and children.

The Métis would elect a provisional government at the beginning of each hunt. Based on a system where every ten families would elect captains, those ten captains would then form a provisional government. A general election for the chief or president of the provisional government would also be held. The system would last all during hunting season, preserving order and intergovernmental relations. During the early 1800s, the Métis were also making treaties with other Native peoples. They did not have treaties with the Cree and Plains Ojibway in Manitoba and Saskatchewan because those groups were their close relatives. But they held treaties with the American Indians, another example of the Métis exercising their sovereign and inherent rights.

In Manitoba, a Métis bill of rights, drawn up by Louis Riel, was in place by 1869. This first expression of the Métis as a new nation was made as they were negotiating to bring Manitoba into the Dominion of Canada. In 1870, Louis Riel and the Métis accomplished this goal, and, in effect, Manitoba came into confederation as a Métis province. The Métis view the *Manitoba Act* as fundamentally a Métis treaty with the Dominion of Canada. The significant parts of that treaty include: Métis were guaranteed 1.6 million acres of land that was inalienable for three generations; the land was to be delivered to the Métis in blocks or reserves so that they could maintain control over the communities; and language rights were to be guaranteed. At the time Riel brought Manitoba into confederation, about 12,000 people lived in Assiniboia, of which 10,000 were Métis. (This number does not include treaty Indians who were dealt with separately.)

Shortly after, it became clear that Prime Minister Sir John A. Macdonald had made a conscious decision not to deliver on the provisions of the *Manitoba Act*. He stated:"We will allow the Métis to come to Ottawa to talk, and talk, and talk, until their current effervescence subsides." He planned to ignore the Métis; his main goal was pushing the Canadian Pacific Railway across Canada. Land surveys were not carried out immediately as had been promised. From 1870 to 1880, some eighteen federal and provincial acts were passed with the sole intent of breaking up the Métis reserves.

The purpose was to provide land for incoming settlers from Ontario and Europe. Although Louis Riel was a democratically elected Member of Parliament, he was not allowed to take his seat in the House of Commons. Prior to the *Manitoba Act*, Riel was charged with treason and killing Tom Scott, an Orangeman sent from Ontario to raise trouble in the Red River Valley. Riel was to be pardoned, but Sir John A. Macdonald never went through with the pardon. The Métis people left the Red River because of the failure of the federal government to fulfill the provisions of the *Manitoba Act*. Métis went south and west to North Dakota, Montana, northern Manitoba, and Alberta. In 1890, the province of Manitoba removed the French-language protections and school system that had been in place. Laws were enacted that prohibited Métis dancing and gatherings of more than three Métis people.

In the 1870s, Gabriel Dumont had gone to Belcourt, North Dakota. When the treaty was ratified in Belcourt, 7,000 Métis and 65 full-blood Indians were on the rolls. In the United States, it is far more common to find Métis who signed treaties and have treaty status than it is in Canada. In Canada, the Métis thought they had their own province—Manitoba—and they viewed the *Manitoba Act* as their treaty. They didn't see signing other treaties as necessary. In the US, they signed treaties and that provided protection for the Métis language, which is taught in Belcourt schools and the community college.

Since 1882, Belcourt has had its own police force and has done border patrol. The town has its own tribal court with judges and probation officers. In 1935, the first aboriginal woman police officer in North America was appointed in Belcourt. (In the 1960s and 1970s, Canadian police forces thought they were progressive in recruiting women. The Métis were doing this many years before.)

Gabriel Dumont ended up in St Laurent on the South Saskatchewan, where the first codified set of laws was produced. The document, thirty pages long, is called "The Laws of St Laurent." There is an addendum called "Laws for the Prairie and Hunting," because the Métis had two types of social organizations: the communities where they lived and the moving communities on the plains. For all laws, a council acted as the judicial tribunal, with a mandate to settle differences between people by arbitration. The Métis council recognized contracts whether written in French, Indian characters, or English, and even those made without witnesses. So, in South Saskatchewan, they continued their tradition of protecting all languages.

According to Métis laws and customs, punishment for most offences was quite lenient and usually involved only a small fine. Social ridicule was also used. Losing face was one of the most severe punishments that could be imposed. In the hunting camps, a thief would be put in the middle of the camp, the crowd would point at the thief, and yell three times, "Thief!" The St Laurent community had moved to a cash economy rather than just trade goods. As a result, small fines were put in place. Corporal punishment was also removed. The theme of the laws was to resolve situations and mediate them before they resulted in a serious offence; laws were directed toward crime prevention and based on restitution and reparation.

THE METIS TODAY

The Métis are being destroyed, slowly but surely. We are being kept down so that we cannot find our rightful place in Canadian society. In Manitoba, some communities are comprised of nearly all Métis people. We are over-represented in the criminal justice system and experience considerable conflict with the law.

The Métis are taking steps to assume control over their own social and criminal justice affairs, although they have met obstacles. Attempts are being made to establish a service for children and families, but these efforts have been blocked. Under the *Child and Family Service Act*, any three people can incorporate and approach the government to form a child and family service agency. But this option has not been available for Métis people. There are 8,000 Jewish people in Winnipeg and 2,000 children; they can secure a mandate to have a Jewish Child and Family Service. There are 111,000 Métis people in Manitoba, 1,200 Métis children in care, and yet the Métis cannot establish their own agency.

There are some questions about Standard 421 and the requirement that the provincial government report to us the number and status of children in care. It is important to understand the standards under the *Child and Family Service Act;* our position is that the government and its various agencies have not done this. So we are developing a challenge to this under the *Charter of Rights and Freedoms*.

In Manitoba, the delivery of child and services is divided between private agencies and regional government offices. The regions have some degree of autonomy, depending on how much the director wants to interfere in the divisions or departmental offices across the province. We have had great cooperation from one region and absolute resistance to providing information and referrals from another northern region. The one immediately north of that area, however, has recently complied with the agreement to provide referrals under Standard 421. It is simply a matter of bureaucrats making up their minds to facilitate an orderly transition, or to block it, being as difficult as possible.

The whole process is much more difficult for Métis people than for Natives and their agencies. The law in Manitoba requires referrals to the Manitoba Native Federation or to an appropriate agency. For the

Métis, it is more difficult because they do not have a land-based justice or social system.

One reason that the Métis are challenging parts of the Manitoba Act is that the Métis reserve—as it was called in the 1870s and 1880s—was effectively taken away from our people. We are now attempting to get back our land base or reach a settlement that would provide a land base. Non-land-based systems are unique, except perhaps those operated by the Maori people in New Zealand.

Comment **Member of Audience.** I believe that the initiatives Native people are undertaking in alternative dispute resolution are valid. However, I do not subscribe to the position that a separate system for Native people is needed. Now that there is a Canadian *Charter of Rights and Freedoms*, that aim would seem to be even more difficult.

Response **Lawrence Barkwell.** I have been working in corrections for twenty-two years. I was probably naive in thinking we could have a system that aboriginal people and non-aboriginal people could work together. I have given up on this idea for a number of reasons. We have just been worn down and that has broken our hearts. Only a year-and-a-half ago, one of my staff was going to a pow-wow in the evening. In the afternoon when he came into work, he was wearing his ribbon shirt. Some other staff asked him, "What are you going to? A costume party?" He was patient. "No, this is a ribbon shirt. The ribbons stand for when I went to my ceremony to obtain my aboriginal name. They are a sign of honour and obligation." And a staff person turned on his heels, saying, "Well, it still looks like you're dressed for Hallowe'en."

White people have been breaking our hearts for years. I used to believe, "Yeah, I can have these guys. We'll work together and we will have a top-notch operating unit." I've been trying for twenty-two years. I haven't succeeded and, in the last year or two, I came to the conclusion that no changes will take place unless there is a separate, parallel system. I don't feel that in twenty-two years I have made any progress in the current system.

The Canadian Bar Association report has recommended a separate system for Native people. And it does so for compelling reasons. Aboriginal people and their organizations have not suggested that their right to the kinds of service they are talking about should be exclusionary. If the mainstream system wishes to borrow from the aboriginal systems, that is perfectly acceptable to most aboriginal peoples and organizations. The problem is control and colonialization. You have to take a step back and think, "If you were colonized, if you were in a position where all your inherent systems and traditions were removed from you, would you be willing to place faith in the people who did that to you? Would you want them to be adjudicating for you?" I can't imagine circumstances where any of us would do that. If we were held captive by a kidnapper, the last person we would like to see on the jury at the trial is a kidnapper. That's the same philosophy.

A separate system does not mean that those same services can't be offered. It simply means that the players are important to the community. It isn't that the systems being proposed are going to exclude responsibility. In fact, if you speak with the elders, responsibility may in fact be increased, because the system will increase responsibility. Right now, the Native community tends to see the justice system as us vs. them. A separate system will increase individual responsibility.

Remember that aboriginal people were not signatory parties to the U.S. *Constitution* or the Canadian *Constitution*. What is now being discussed is not new but rather a resurgence of the ages. In that context, it is important to understand the substantial difference between American and Canadian law. In the United States, First Chief Justice John Marshall signed a decision holding that

Indian people did not cede laws and authority in the treaties that were signed. Nor were those laws and authority taken away by Congress. Rather they remained vested in the aboriginal peoples. That body of law was pushed through by the Montana and then the Navaho judges, expanding the body of available law for aboriginal peoples in the United States. In the early 1980s, the Indian *Child Welfare Act* was enacted, which we used in our proposals as a model.

It is a bit ironic that aboriginal people have to rely on the Canadian *Constitution* and the *Charter of Rights and Freedoms* to argue their case when we weren't even asked to sign them.

Question **Member of Audience.** Could you explain a bit more about the probation service for aboriginal people in Manitoba?

Response **David Chartrand.** The Dakota Ojibway operate a probation service around the community of Portage La Prairie which provides more than just the right to speak in one's own language. There are substantial differences in the way people interrelate. Communication is not just speaking to somebody in their own language; it is a way of organizing thoughts and responsibilities. It is referring people to other community people. It's bringing in outside resources. The whole philosophy is different.

Control is another important aspect. The white probation officer or social worker drives in from Portage La Prairie, to a reserve sixty to seventy miles to the north or flies 300 miles from Thompson, to ask, "Did you go to school every day?" This practice is different from having a person in the community who makes you feel accountable for your actions. That's the essential difference: whether the community owns the responsibility of controlling the behaviour and the individual feels accountable to the community. Individuals will not feel accountable to a white community that is simply imposing its will again.

In Winnipeg, the Métis formed a justice committee to develop alternative measures under the *Young Offenders Act*. They operate their own recreational services; they involve the elders who have the kids participate in smudge ceremonies. You would not find these types of activities in the mainstream system.

Question **Mel Holley, Manitoba Legal Aid.** Other than cost-related issues, are there other concerns that might hinder aboriginal peoples from taking control of their own criminal justice system? On some reserves I'm familiar with, there are problems that might hinder that process. The young people have been acculturated to videos and white culture. They don't respect their elders. They don't respect the traditional roles of the Native community. They are experimenting with drugs and alcohol. How can a parallel system possibly work in these situations? They don't have the majority of the young people respecting elders and the elders are dying off. We may be out of time. It may be too late for a parallel system.

Response **Lawrence Barkwell.** I don't purport to speak for aboriginal peoples but I will say that I have been involved with a number of organizations where young people may not have all of the values. That happens in all societies. It doesn't happen only in aboriginal societies. But people gradually mature. Culture is a living, breathing activity, and video games can be part of Indian culture. Indian people don't have to live as they lived in the seventeenth century to be Indian. I know that the video games were peripheral to your point, but the point is that colonialization was not appropriate in the seventeenth century and it's not appropriate in the twentieth century.

The youth you are speaking of not only don't respect the elders, they don't respect other people. However, time will take its course. Even though these young people do not in any way respect the elders, they know the community has norms that state you must respect these people. Deep inside, these youth know that the rest of the community does respect these people. They may be the rebellious type; however, they know the norm.

Often aboriginal people have standards imposed upon them. It would be like Russia or another country invading Canada and saying, "This is the law from now on." I don't think you would feel the same way you do today if Russia came and said, "This is how you are going to live from now on. These are the laws you are going to follow."

Question **Member of Audience.** Are Native peoples going to take on those other social responsibilities—dealing with alcoholism and teaching children their responsibilities?

Response **David Chartrand.** To address justice issues, the larger economic picture has to be considered. The government does not want to recognize anything. The standards that should be applied are not Ottawa standards, but those of the community in which people live. People in Ottawa don't know how you live. People will abide by the standards of their community. They been in place for much longer than those imposed by white society.

The issue of cost is important. The aboriginal community in Manitoba and in the other prairie provinces is spread over a large land area. In Manitoba, over fifty per cent of the kids incarcerated in the Manitoba Youth Facility came from north of Thompson. They were flown down from their communities to Thompson, couldn't bring their things with them, and often can't even use the telephone to call their parents—because their parents don't have telephones. This situation leads to major problems of isolation and high transportation costs. In one year, nearly $200,000 was spent transporting kids in and out of one community, more than enough money to fund an entire recreation program for three communities.

You could have put social workers in every one of those communities. You could have done fifteen things other than paying for people to be locked up in the south. It doesn't take a genius to figure out that eighty-nine per cent of the people are aboriginal, and the vast majority are from northern and remote communities. It doesn't take a genius to figure out that there are major transportation and cost problems with that.

Question **Member of Audience.** Several inquiries have been going on in the province of Alberta examining issues related to Native people and the criminal justice system. There's also the recent report of the Manitoba Aboriginal Justice Inquiry. Who is responsible for responding to the findings and recommendations of these inquiries? For taking steps to address the problems that have been identified? Who is ultimately accountable?

Response **David Chartrand.** A writer once made the point that, if a system is making people sick, you either cure the people and put them back in the system, or you change the system. If you are asking me how to reduce aboriginal incarceration rates and make aboriginal people less in conflict with the law, my response is that you turn control of their lives over to aboriginal peoples. It doesn't surprise me that the Alberta government is saying no racism exists in that province. We hear the same thing in Manitoba.

Comment **Member of Audience.** I was a prosecutor in Alberta for twelve years and also a lawyer in the province of Ontario. I have real concerns about breaking up the administration of justice along racial lines. I think that what we have to do in this society is work out different processes within a single jurisdiction. Let me give you an example: I prosecuted a man for criminal negligence causing death seven years ago. He killed a cousin of a man he knew very well; a Métis man who owned five skidders and had 400 head of cattle. Had there been a resolution out of court, how would that have worked out? The man's family had a damages claim for about $350,000 to $500,000 for his death. How do you work that out when you have separate systems? We are looking at a very complex problem.

We shouldn't be pointing fingers or laughing. We have to get down to the hard business of allocating dollars, putting them where they should go and realizing that somebody has to make the decisions—of criminal liability, civil liability, child custody. We have to work out all of the interests involved. I think that we tend to be very superficial. A price will be attached to total separation. So, I'm not saying that I am against separation—I have for a long time been fairly active in promoting sentencing alternatives in Alberta. But if we have complete separation in the system, we had better start looking at what it is going to cost everybody.

Response **Burt Galaway, University of Manitoba.** We are just tinkering around the fringes of what is perhaps a very major problem. Perhaps we should be asking questions about the way we view disputes in our cultures generally. When we speak about separate systems, we may really be speaking about a different approach to dealing with problems.

Comment **Lawrence Barkwell.** I would like to have a careful look at the proliferation of jurisdictions. In the province of Manitoba, if I commit a break and enter in Winnipeg, the Winnipeg City Police are going to pick me up. Then I will go through the provincial Crown attorney and prosecutor. If I get caught with a big bag of dope, the Royal Canadian Mounted Police are going to pick me up. Then the federal Crown counsel will prosecute me. If I get a sentence under two years, I'm going to go to a provincial jail. If I get a sentence of two years plus a day, I'm going to a federal institution. Whether I'm in a federal or provincial institution in Manitoba, the National Parole Board will decide on my release. However, if I am in Ontario, the provincial parole board will decide if I get released from a provincial institution, and the National Parole Board will decide if I get released from a federal institution.

There is already extensive duplication in the system. Perhaps 100 years ago, it was appropriate to have a national system of penitentiaries for more severe sentences and a provincial system for those offenders receiving sentences of less than two years. But is it appropriate for 1991? The need is for separation rather than duplication. But the federal government doesn't want to give up certain powers to the provinces and the provinces don't want to give up the jurisdiction they have. This creates tension. Add aboriginal issues and the situation becomes even more complex and strained.

The Métis are only asking for a seat at the table. The Law Reform Commission of Canada has a mandate to examine aboriginal issues. They sent an invitation to the Manitoba Assembly of Chiefs, who represent 58,000 Treaty Indians in the province, but they didn't bother calling the Manitoba Métis Federation, which represents 111,000 Métis people. Things have to change. The Métis people have a right to participate in these discussions and deliberations as an equal player.

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7

JUSTICE IN GREENLAND

RESOURCE PERSON

Henrik G. Jensen, Institute for Procedure and Criminal Science, Aarhus University, Denmark

This description of the Greenlandic justice system examines the development and present-day application of the *Greenlandic Criminal Code*.

INTRODUCTION

Over the past few years, interest in the Greenlandic justice system has increased in North America. This interest has especially been in the court system and the use of lay judges and lay-assessors which give a strong connection to the local community, because the people involved in the administration of justice are known and respected in the community. Also the *Greenlandic Criminal Code* is interesting in that it has incorporated a great deal of the traditional ways and gives local lay judges the possibility of responding to a criminal offence according to the Greenlandic way of looking at this specific offence. The *Criminal Code* has recently been criticized for "being too lenient." I will illustrate, with examples from the court practice, why this opinion and critique has come up.

Moreover, the special "prison" system where prisoners are working in the community during the day and only are locked up at night will be described as an example of how "justice" in Greenland is based on the idea of self-sufficiency and decentralization. No strangers are coming into the community to make decisions and pass sentences. It is all done by members in the community itself.

There are 55,558 people living today in Greenland. Of these, 9,416 are Danish or from other countries. Greenlanders number 46,142 and they are part of the Inuit population of North America. When considering the size of the island, not many people live there: Greenland is the world's largest island, approximately seven times larger than the British Isles.

BEFORE THE 1951 ADMINISTRATION OF JUSTICE ACT

In old Greenland, before the colonization begun when Eric the Red went to live in Greenland, disputes were settled by the so-called "singing fights." If a member of the Inuit society wanted to make a complaint against another member, he composed a song about it, challenging the latter to meet him by announcing that he intended to sing against him. The song was accompanied by a drum beat and dances (the so-called "drum dances"). To begin with, one party sang while the opposite party listened, after which they changed so that this party could present his song. In this way, the two parties listened and sang in turns until one of them gave up, given the disparaging and lecturing jeers expressed by the audience. One can say, therefore, that the dispute was settled by a manifestation of the public opinion.

It has been argued that song fights or drum dances might be seen as a kind of court of justice with the audience acting as the judge. During recent years, however, the function of the singing fights has been the object of new evaluation. It is now held that the said comparison is incorrect, since no judgment was passed nor any of the parties punished. Thus Breinholt Larsen argues:

> The song fight institution worked as a frame, where inside conflicts that were repressed in daily interaction could be discussed without having to fear a breach of the peace of the community, just because the song fight took the conflicts out of the context from

> which they had arisen and put them into a ritual form. Thus, the song fight had a "psychotherapeutic" function.

At the time after the Danish priest Hans Egede's arrival in Greenland, there were no regulations regarding crime, punishment, and administration. The practicing administrative authority was with the Danish merchants who, given the lack of legislation, sentenced only according to their own judgment.

It was, however, only the Danish population who were submitted to this authority. The Greenlandic population were left to settle their own mutual conflicts, except for very serious offences. In this way, a specific Greenlandic conception of law was recognized, a conception that would later appear to be a fundamental feature in the elaboration of the laws and administration of justice in Greenland. A dualistic penal law system arose placing the Danish and the Greenlandic population under separate systems. For the designated authorities, however, there were definite regulations, given that they were sentenced according to Danish legislation.

In an attempt to improve the Danish conditions, the first comprehensive law for Greenland was elaborated in 1782. It was called "Instruks for handelen og hvalfangerne på Grønland" (Instructions for the trade and the whalers on Greenland). These instructions introduced uniform rules for the different colonies (the districts in which a major city was situated), permanent prices, and a superior Royal control through two inspectorates, one in the north and one in the south.

As a leitmotif in the instruction and for the kind of work the inspectors should carry out, it was indicated that *this should be done for the benefit of the Greenlandic people*. After this requirement had been taken into consideration, then the interests of trade should be furthered as much as possible. The regulations concerning communication between the delegates and the local population were also tightened so that delegates were only allowed to enter the Greenlanders' houses provided that they were there on lawful business. Distribution or serving of alcohol to Greenlanders was not allowed, and children of mixed marriages were to be taught to become skilled craftsmen, so that they could replace the men from Denmark in the future. On the whole, it was the inspectors' post to act as the protector of the Greenlandic people and to control the traders.

By a circular letter of 21 May 1798 to the inspectors, traders, and assistants in Greenland, they received instructions to send in suggestions on how the Greenlanders could be encouraged economically by placing them under legislation. The opinion was that it was necessary in order to improve the Greenlander's conditions of life that they be placed under the constraint of a civil law, since apparently they did not have any conception of obligation and means of compulsion or of punishment apart from the mentioned "song fights."

This way of thinking, however, was not new. As Glahn the missionary had pointed out in 1767, there was a growing need for a law for the Greenlandic people. He mentioned, however, that in this connection, it was necessary to have a thorough knowledge of the Greenlanders' customs and rituals, which the legislator ought to take into consideration when issuing the laws.

In their reply, the two inspectors recommended that the Greenlanders' conception of "property" and "ownership" were extended and that the sentencing authority in serious criminal cases be placed with the inspectors. If, however, the inspectors were unable to appear, the most "reasonable" and "respected" Greenlanders should participate in the judgment.

In 1856 J. H. Rink, the Inspector of South Greenland, who felt the same about bringing the Greenlanders under a kind of civil law, in concert with other influential government officials, sent a recommendation to the Ministry of the Interior for setting up a so-called principal councils (Forstanderskaber) with the social administration as their main task. In light of this, a temporary regulation was issued in 1857 for setting up the principal councils in South Greenland and later as the experiment was considered a success they were legally laid down for South and North Greenland in 1862. Members of the principal councils were Danish and Greenlandic. The typical Danish members were the priest (who was the chairman), the colonial manager, the doctor, and his assistants. The Greenlandic members were the so-called "principals" (forstandere).

The purpose of these local councils was to supervise the district, keep order, and provide guidance for the Greenlandic people. At regular intervals, meetings were held at which the principal councils delivered reports and received new regulations, and by this an extensive administration came into existence in Greenland. The principal councils also acted as special Greenlandic courts. These were called principal courts (Forstanderskabsretter). The priest as chairman was placed under appeal to the Inspector of North or South Greenland, depending on where the case in question belonged.

Although the first legal regulations to be used by the principal councils laid down only a few rules on punishment for theft and other major violations, a Greenlandic practice in the administration of justice gradually developed through these courts. It has been stated that, as a starting point, these courts turned to the customary law of Greenland.

In 1919, by a law amendment, all Greenlandic affairs were gathered under the regulation of the "Administration of the Colonies in Greenland" (Styrelsen af Kolonierne i Grønland). This gave rise to the national councils (landsråd) and the local councils (kommuneråd), and at the same time the principal councils and principal courts disappeared. The members of the local councils were elected among the Greenlandic population. The term was for a period of four years. The members of the national councils were elected by the members of the local councils in each of the national councils' constituencies. They were elected for a six-year period and the number of members was not allowed to be more than twelve. The Inspector was the permanent chairman, but without the right of voting.

The national councils were here given an important new authority being able to take part in the creation of new regulations for Greenland. Presumably, this led to the passing of a great number of new regulations closely connected with the Greenlandic conception of law. In Eastern Greenland, these administrative conditions were not yet introduced: the colonial manager and the priest remained the highest controlling authority. In Northern and Southern Greenland, where the new conditions had been introduced, two new Greenlandic courts came into existence: the local councils passed sentences in civil law cases whereas criminal cases were sentenced by mixed courts.

After World War I, an extension of the administrative structure in Greenland took place, and, in 1920, a committee in which Greenlanders were also represented was set up. Through the work of this committee, the statute on the administration of Greenland of 18 April 1925 (Lov om Grønlands Styrelse af 18. april 1925) was formed. This statute remained in force until 1950. This new statute incorporated Eastern Greenland and Thule in the administrative division. The inspectors' offices were abolished and instead two national officials' offices (landsfogedembeder), one for each of Northern and Southern Greenland, were established. In this way, the national officials became the highest administrative authorities, and at the same time they were the chairmen of the still existing national councils.

The administrative classification consisted of countries (sysler) including the former colonial districts and each county was divided into several municipalities (kommuner). The chief administrative officer of the county (sysselmanden) was chairman of the county council (Sysselrådet), whereas the local councils were the administrative organs for the municipalities.

It was an essential feature of the new statute that the existing dualistic legal system was extended. According to the regulations in the new statute, the Greenlanders should be subject to Greenlandic law which consisted of only few written regulations (the ones given by the national, county, and local councils) and, apart from those, of unwritten customary law and a few sentences. Greenlanders, however, might be subject to Danish law, for instance, if they were working in Danish service. A Greenlandic woman who married a man who was subject to Danish law might also be placed under Danish law. If the marriage was later dissolved by divorce or death of the husband, the woman would return under Greenlandic law.

In cases where conditions warranted, the Minister of the Interior might decide that a person should be transferred from Greenlandic to Danish law. Under Danish law were persons who were attached to the colonial administration, except such persons, for instance, who were born in Greenland and ran Greenlandic businesses or Danish women who married Greenlanders subject to Greenland law. Persons who were subject to Danish law had to respect the legal norms applying to the Greenlanders. Furthermore, Greenlanders who were subject to Greenlandic law were at the same time subject to the laws given specifically for Greenland or laws which must be considered indirectly valid for Greenland, too.

Since an absolute ethnic criterion was not used in deciding to which legal system a person belonged, the identity or overlapping of the two systems very soon became a matter of concern, so that it was no easy task to draw the line between their legal spheres or to avoid collisions.

It is interesting to see that the "basis of existence" rather than the ethnic origin formed the starting point for deciding by which legal system a person should be sentenced.

This dualistic structure required special courts to judge according to each of the two legal systems. In cases belonging to the Danish system, the national official (landsfogeden; who had to be a Danish judge) was the court of first instance with appeal to the High Court (Østre Landsret) in Copenhagen, Denmark. In the case of major crimes which were estimated to go beyond a punishment of fine or confiscation, the accused had to be sent to Denmark in order to be sentenced by a Danish court.

Cases belonging under Greenlandic law were settled by the Greenlandic courts, the so-called county courts (Sysselretter) which were introduced together with the counties, and the county councils. In the county courts, the chief administrative officer of the county, who was usually the colony manager, passed sentences together with two lay-assessors, most often one Greenlandic and one Danish person, appointed by himself. In major criminal cases, however, most often four lay-assessors, two of each nationality, would be involved. The decisions given by the county courts could not be appealed to a higher court, not even in Denmark, but the national officer had a certain limited access to remit the case for retrial by the county court. It was a common feature with both jurisdictions that in criminal cases the judge acted also as the Crown's prosecutor. Thus, the judging and the prosecuting authorities were not separate but identical—a rather unfortunate circumstance seen from ordinary principles of law.

AFTER THE ADMINISTRATION OF JUSTICE ACT IN 1951

During World War II, Greenland had isolated from Denmark. After the war, the populations of Greenland and Denmark both wanted Greenland incorporated under the Danish constitution and its status as a colony thereby terminated. The need for a common legislation and administration of justice was now urgently making itself felt. For this purpose, the Greenlandic Commission was set up and operated from 1948 to 1950. The report of the Commission is often referred to as G-50.

The Greenlandic Commission considered whether it would be possible to introduce the Danish administration of justice in Greenland, but found that social conditions at that time prevented this. Instead, an alternative model was introduced, which had some of the same principles as the ones found in the Danish system, but was characterized by a high priority of elements taken from the lay judge institution. In addition to this, it was agreed that the most serious disadvantages of the system up to that time had been as follows: persons who were subject to Danish law and persons who were subject to Greenlandic law were treated according to different systems; the sentencing and prosecuting authorities were not segregated from one another; and there was no possibility of appealing the judgments given by the county courts.

Furthermore, the Commission discussed the possibility of having jurisdictionally educated judges in charge of the lower courts. This idea, however, was abandoned because of the risk of further bureaucratizing the administrative system, given that the long distances and difficult travelling conditions would require at least three judges. If such a court system had been established, it would have been much similar to the Canadian "circuit court" system which has been criticized for alienating people from the administration of justice. The Commission concluded that, in order to separate the sentencing and prosecuting authorities, it was necessary to introduce a real police force.

Moreover, they agreed that the disadvantages caused by the lack of legal expert knowledge with the county courts should be mitigated by setting up a court of appeal presided over by a jurisdictionally trained judge. Moreover, it should be possible to let more complicated cases be tried by a higher court as the first instance. The higher court should also be directed to guide the lower courts on issues related to legal positions. In the report of the Commission, the lower courts were named magistrate courts and the court of appeal was named the High Court of Greenland.

During 1950, the Danish Prime Minister's Department, closely following the suggestions of the Commission, prepared a proposal for an *Administration of Justice Act* for Greenland which was presented in the Danish Parliament in spring 1951.

The proposal stated that:

> It aims at introducing a common legal system for all people living in Greenland, without ignoring the specific Greenlandic conditions. In the first place, it is intended to create legal regulations regarding the establishment and composition of those organs which are necessary to carry out the reform. The Prime Minister, however, also wants to stress the necessity of procedural regulations for the use of these organs, in order to guarantee that the legal execution takes place according to uniform rules and under consideration of a number of procedural principles which have been tried out in more developed societies like the Danish one and which must be considered a necessary prerequisite for a secure treatment of legal cases.
>
> Institutions with no expert knowledge and without guidance cannot be expected to be able to meet this condition. In accordance with this regulations regarding the procedure and the position of parties and witnesses are included. It is endeavoured, as far as specific Greenlandic considerations do not speak against it, to harmonize the Greenlandic legal status with that of Denmark. Various circumstances, however, make deviations necessary. The organization of the legal institutions must considerably differ from the organization of the Danish legal system which is based on a much further developed social order than the Greenland society. Moreover there is a lack of material regulations which determines some deviation in the prescriptions regarding legal procedure. Other specific circumstances determining deviations are the large distance, the difficult conditions of communication, and the lack of a professional staff to attend to the administration of justice.

The proposal was confirmed as *Act No. 271* of 14 June 1951, which *Act* has since then formed the basis of the composition of the Greenlandic court and justice system.

According to the *Greenland Administration of Justice Act*, there is today a court in each local district in the country. Greenland is divided into sixteen legal districts (retskredse), each having one law district magistrate (kredsdommer) and two assessors (domsmaend).

The appeal court is the High Court of Greenland (Landsretten) at Nuuk /Godthab, consisting of one legally trained High Court justice (landsdommer), four deputies, and lay-assessors. The district magistrate is appointed for a period of four years by the High Court justice. The lay-assessors of the local courts are elected by the council of the local district. The High Court justice is appointed by the Queen, and the assessors of the High Court are elected by the Greenland Assembly for a term of four years.

The local courts deal with the same categories of cases as the Danish lower courts, including criminal cases, civil cases, cases of paternity, cases of marriage, and cases of probate. The High Court at Nuuk/Godthab is normally an appeal court, but in certain cases, the High Court may serve as the initial court. Because the magistrates and the lay-assessors speak the Native language, there is no need for interpreters in the courts.

When the new judicial system was planned, it was discussed whether the courts should be conducted by legally trained judges, as in Denmark, or by lay magistrates. The establishment of courts led by laymen was partly caused by practical reasons. There were (and are), with very few exceptions, enough legally trained Greenlanders; the judicially-trained judges, however, had to be sent out from Denmark. To remedy the lack of judicial training and knowledge of the magistrates, it is imposed on the High Court judge to instruct the magistrates how to try different cases and that the more difficult cases can be referred to the High Court in the first instance.

While there have been many modernizations in Greenland over the years, including better communications amongst the communities, the value of a court system composed of members of the local community who speak the same language as the litigants and the defendants should not be underestimated. In a time when many Greenlanders are precluded from participation in important public functions because of education requirements and a lack of technical knowledge, it seems important to have Greenlanders take an active part in the administration of justice and thereby exercise some influence on the activities of the legal system in their community, something that would be interesting to have incorporated in North American courts.

In each community, there is a police station with three to five police officers. Throughout the whole country, there were, on 31 December 1990

105 police officers, only twenty-four of whom are Danish. Thus, native Greenlanders run the policing system. There is a policing school in Greenland that has a three-year course of study, including one year of practical study in policing in Denmark.

THE GREENLAND CRIMINAL CODE

The *Greenland Criminal Code* of 5 March 1954 is unique in its creation of a system of sanctions that are inspired, not by the gravity of the offence itself, but by a desire to rehabilitate the offender and to protect society. As such, it is able to tailor the sanction to the individual in a humanitarian way.

The code is designated as a criminal code instead of a penal code in order to emphasize that punishment, as it is traditionally conceived, is only one of the sanctions authorized by the code. This is also the reason that the descriptions of the offence use the words "will be convicted of" instead of "will be punished for."

The *Greenlandic Criminal Code* was drafted by a group of scholars —Verner Goldschmidt, Agnethee Weis Benzon, and Per Lindegaard—sent in 1948 and 1949 by the Danish government to study whether to introduce Danish criminal law to Greenland or to codify the existing law of Greenland. This was the jurisdictional expedition that was to have a major impact on the *Greenlandic Criminal Code*. The commissioners came to the view that punishment for a crime could often be more disruptive for a small community than the crime itself; that sanctions could often increase rather than reduce the community discord generated by a crime. The *Greenlandic Criminal Code* of 1954 incorporates this perspective of criminal sanctions.

Legal Sanctions

The basic principle of the administration of justice in Greenland is to be found in the individualized treatment of criminals, substantively unaffected by the gravity of the crime. The outstanding characteristic of the informal system of sanctions introduced in 1948–1949 was its flexibility and its rejection of the use of prisons. The types of sanctions which were used required detailed descriptions, since only a few of them correspond to those used in European, American, and Canadian criminal law.

Confinement was rarely used as a legal sanction; and there were no prisons during this time. This reflected the psychological inability of the population to tolerate the idea of imprisonment, the practical difficulty of providing suitable detention facilities, and the country's need for as large a working force as possible. In a very few cases, criminals were confined to make-shift cells, but allowed to work in the community during the daytime. Generally, confinement was used only for convicts who were considered dangerous or those who had committed particularly heinous crimes. But no person was subjected to complete confinement for a long period of time: either he was set free after a short period of time or his isolation was considerably modified.

Conditions of release were sometimes set by fixing the area in which the convict had to remain for a stated period of time or proscribing his visiting the area where the crime was committed. Persons were sent to places where they might lead a normal social existence under limited supervision, and not to uninhabited areas as had originally been the case. Sometimes the offender was placed in the custody of hunters or shepherds, who were occasionally instructed to provide him with compulsory training. Authorities believed that conditions of residence were a suitable sanction against persons who needed a change of environment. Sometimes such a disposition was ordered to protect the local population from the bad influence of the offender.

Forced labour, by which the convict is required to work, usually for a public institution, was also common. Normal wages were generally paid for the work, although the wages were often used to cover damages flowing from the crime or to support the convict's family. Originally, forced labour was designed to accustom the offender to regular work, but, in recent years, it has also been employed for punitive purposes.

Fines are the most frequently used sanction against crime. But manslaughter will usually result in imprisonment for five years. Appointment of a supervisor was also used as a sanction. Loss of civil rights was ordered in several cases ranging from one to five years, and, in one case, was permanent. For crimes in which alcohol was involved, deprivation of the right to buy alcohol was frequently decreed. Supervision was easy because of the limited size of the communities and the small number of shops where alcohol could be purchased.

A multiplicity of other sanctions including confiscation, publication of the convict's name and offence, and admonition or warning. Even when dealing with serious crimes, courts had sometimes settled the matter with admonitions and warnings. In a few cases, dangerous sexual criminals were given a choice between indefinite confinement or castration. Castration on this basis was chosen by at least one convict who had raped six girls between the ages of six and thirteen.

It is important to note that the concept of insanity scarcely existed in Greenland. Generally, decisions concerning psychologically disturbed criminals were open-minded and creative. A freewheeling approach was illustrated in 1935 with a convict who, previously admonished for having intercourse with dogs, raped an eight-year-old girl. He was sentenced to one year of forced labour on probation after he agreed to marry a local feeble-minded nymphomaniac who was sterile. There is no further record of further violation on his part!

The number of unsettled cases was comparatively large, partly because of vacillation in enforcing the law and partly because cases were often settled without legal proceedings when the offender admitted his guilt and showed repentance. It seems that the authorities were often satisfied by the discovery of the perpetrator of the crime and felt no need to take further steps. This attitude may have reflected the lack of sufficient legislative and administrative guidelines concerning what was forbidden and permissible, and the steps to be taken against offenders.

The *Greenlandic Criminal Code* is designed differently than other European criminal codes, being separated into two parts: "offences" and "the consequences of committing a crime". About the *Code*, the following can especially be mentioned.

- The term "criminal code" is used instead of "penal code" and the word "arrangements" is used instead of "sanctions" in order to underline that punishment is only one of many of the possible consequences that the code provides.
- The code abolishes the distinction between legal positions in that the code is valid for anyone living in Greenland.
- The crimes in general are the same as those according to the penal code of Denmark.

- All offences are placed under public charges.
- The code today contains the following "arrangements" towards an offender: court warning, fine, supervision, orders to stay in or to stay away from a certain place, forced labour, forced education, medical treatment or placement in a correctional centre, custody, other restrictions on a person's freedom, and confiscation.

It is altogether characteristic that freedom-taking arrangements are only a small part in the system of sanctions. As it can be seen, whether called "arrangements" or "sanctions," in practice the legal actions are sanctions. It can generally be said that the code tries to use other words to underline its philosophy but in practice it expresses exactly the same system as in any other legal society. The sanctions that the courts sentence, however, are a little different from what is found in other societies. Whether this is linked to traditional ways of dealing with crime or it is directed by economic reasons, will not be discussed her. But these sanctions are not given as a result of tradition but rather result from a lack of resources.

Examples from Practice

1. An accused was found guilty of sexual assault with a ten-year-old girl and was sentenced a fine of 400 kr. ($675 Cdn.). Case 322/87 V.
2. An accused was found guilty of rape twice against his twenty-two-year-old stepdaughter and sentenced to probation for one year and six months. Case 65/87 XII.
3. A thirty-two-year-old man from East Greenland was found guilty of attempted rape against his sister, attempted rape against a twenty-six-year-old woman, threats, rape against an unconscious (drunk) twenty-six-year-old woman, attempted sexual assault towards a twelve-year-old, and theft. The offender was sentenced to six months in the correctional institution. Case 93/89 XVIII.
4. An accused was found guilty of rape against a twelve-year old girl and sentenced to six months in the correctional institution. Case 90/88 VII.
5. An accused was found guilty of rape against a person of the same sex and violence by giving a victim a four to five centimetre-long knife cut in his right arm. The accused was sentenced to the correctional institution for one year and six months. Case 93/88 III.

These cases are all examples from the local courts. Over the last years, the courts have been criticized for being too lenient towards the offender, but it is actually not the *Criminal Code* that directs the decision: it is the lack of room in the correctional centres and the lack of financial support from the Ministry of Justice. The magistrate judges follow the Crown's suggestion for the sentence, given the lack of room in the correctional centres. It should be noted that offenders can also be sentenced for an indeterminate period of time to a psychiatric institution in Denmark, Hersted-Verster, under the Danish Department of Corrections and Probation or to a psychiatric hospital in Denmark. This, however, happens only if the offender is deemed too dangerous or mentally ill to remain in Greenland's open institutions. There is no prison in Greenland, only what can be called night-time correctional institutions, where the convicts are employed outside the facility during the day and return at night to the institution.

There is one open institution in Nuuk, with room for fifty-six inmates. There is also one open institution in the south of the country, which has space for eight offenders, as well as another eight-person facility in the northern part of the country. Besides these three homes, there is a youth pension at Sisimiut with accommodation for eight persons. The homes are directed by the Danish Ministry of Justice, but the Greenlandic homes are supervised by the chief constable at Nuuk. The chief probation officer, who has regional departments at Quaqortoq, Aasiaat, and Nuuk, is directed by a specially appointed supervisor.

The prisons are thus far "open" as the convicts are not properly locked up. The inhabitants of the homes have all been convicted of rather serious crimes. In the homes there are convicts of both sexes, though mainly men. From the criminal statistics, it appears that most of them have committed violence, including homicide and rape.

Apart from a short starting period of about a week's length during which they are not allowed to leave the home, convicts are all subject to the duty of working. This is fulfilled in the towns by working together with the citizens of the town for the usual contractual wages. Usually, it is quite easy to get work for the convicts, since they are very steady workers. For instance, they are certain to show up in time because one of the staff members at the home drives them to work and back again. Moreover, they never have any liquor or drugs.

The convicts' wages are administered by the home direction. They pay for board and lodging (in 1990 630 D.kr. per week; approximately $1.00 Cdn.). They also receive 335 D.Kr. (approximately $.50 Cdn) a week for pocket money. The rest of the income is placed into an account administered by the home staff who also take care that debts to the state, damages, or fines to be paid by the convict are charged to this account.

If, after these costs have been paid, there is money left, the convict may buy things such as stereo equipment or a boat. At his release, the savings are handed over to the convict. In this way, many convicts have succeeded in paying their debts, buying a boat, and saving a small amount of money for their life after prison. The punishment, then, has given them chances that they would otherwise never have had, given that earlier they did not have the possibility of employment nor the commitment. When, after his release, a convict has returned home, bringing with him the biggest and most modern fishing vessel, this has often aroused astonishment and sometimes indignation among the ordinary people who would not have been able to save so much money by living a normal life.

If a convict cannot get work outside the home, he is employed in any jobs that arise within the institution. Often the convicts, accompanied by staff members, will go out hunting or fishing in boats owned by the home. In spite of the fact that they may be killers, they will get guns and fishing tools to be able to shoot seals and reindeer or to catch fish. Some of the bag will be included in the general household of the home, some will be sent to other homes, and the remainder to the home at Herstedvester, Denmark. Some of it may also be traded at the local trade station. This is an excellent way of maintaining the hunting traditions of the convicts, and, besides, it makes it possible for them to have traditional Greenlandic food to eat.

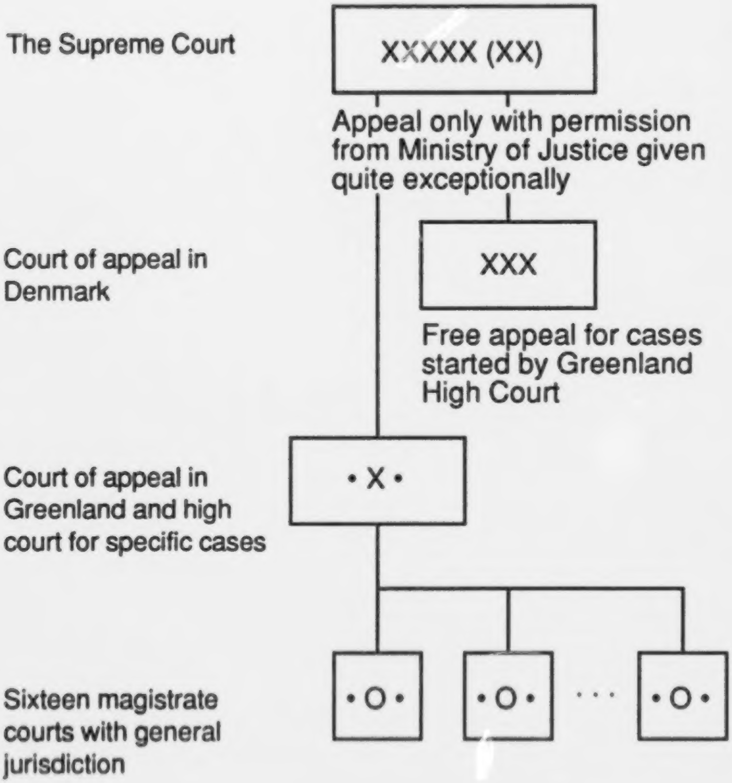
It must be added that the favourable possibilities mentioned have not been noticeably abused by the convicts in Greenland. If a convict violates the current set of rules regarding the serving of sentences in the home, this will be sanctioned according to principles similar to those of the *Criminal Code*. For instance, if he has used his pocket money to buy beer, the amount may be reduced for a number of weeks.

During their stay in the correctional institutions, the convicts may be allowed leave for a day or a weekend. The arrangement is normally carried through quite flexibly, the leave being given according to the need and suitability of the individual person.

It has been hinted by several convicts that they committed their crimes in order to be put into the home, seeing that there they would have a place to live, steady work, and perhaps treatment for abuse of alcohol. Personally, I have seen this in two cases. Two convicts from the eastern coast did not wish to be released on parole after serving two-thirds of their time, because they did not want to go home to Eastern Greenland but preferred to stay in the towns at the western coast after having served their full sentence. There is no doubt that the social framework of the correctional institutions is better than what may be offered in the normal Greenlandic society.

It is my conclusion, after having studied and worked as a deputy judge in Greenland, that the Greenlandic Criminal Code that started out to be a code that adapted traditional sentencing is today just as institutionalized as any criminal code in the world. It is just a little more flexibility. What Greenland now needs are modern correctional institutions where offenders can be placed to protect victims. However, the idea of using lay judges is something that might be considered for introduction into the North American justice system: it gives back the power of justice to the communities.

The Administration of Justice in Greenland


The Supreme Court
XXXXX (XX)
Appeal only with permission from Ministry of Justice given quite exceptionally
Court of appeal in Denmark
XXX
Free appeal for cases started by Greenland High Court
Court of appeal in Greenland and high court for specific cases
• X •
Sixteen magistrate courts with general jurisdiction
• O •
• O •
. . .
• O •

Key:

- X Professional judges with training in law.
- O Lay judges (magistrates): short specific training in connection with appointment and current advisory aid from the staff in the court of appeal in Greenland.
- • Lay-assessors who attend all cases; in Denmark only in criminal cases.

The average daily number of persons kept in different kinds of homes according to the Criminal Code for the period 1975-1989:

Measure	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Psychiatric wards in Denmark			7	6	7	7	6	4	7	9	8	9	11	12	12
	(10)	(10)													
Home for convicts at Herstedvester, Dmk.			6	7	10	10	12	14	17	13	12	9	8	12	12
Home for convicts in Greenland	22	27	36	42	53	48	40	45	49	48	50	57	59	62	67
Youth pension in Greenland	13	6	4	4	9	12	15	11	12	11	11	10	9	11	14
Private homes etc. in Greenland	10	20	19	18	20	21	6	5	9	5	8	10	6	2	1
Supervision of fulfillment of conditions	147	153	151	158	169	186	183	193	176	174	210	205	220	210	208
Total	**202**	**216**	**223**	**235**	**268**	**284**	**262**	**272**	**270**	**260**	**299**	**300**	**313**	**309**	**314**
Mental observation in Denmark	5	4	4	3	4	3	1	2	2	1	2	1	1	1	2

8

NATIVE PEACEKEEPING: CHALLENGES AND OPPORTUNITIES OF THE 1990s

RESOURCE PERSONS

Ken Dokis, Representative of the Union of Ontario Indians to the Ontario Native Council on Justice, Toronto, Ontario

Daryl Webber, Senior Program Officer, Corrections Branch, Ministry of Solicitor General, Ottawa, Ontario

This workshop considered various issues related to policing in aboriginal communities.

INTRODUCTION

Ken Dokis

I come from the Nipissing First Nation Band which lives on the north shore of Lake Nipissing, near the city of North Bay, Ontario. I am from the Ojibway Band. Presently, I am employed with the Union of Ontario Indians as their representative to the Ontario Native Council on Justice (ONCJ). The ONCJ evolved from the Native Advisory Committee to the

Criminal Justice System, which was established in April 1975 at a federal-provincial conference on Native peoples and the criminal justice system.

In late 1976, this committee was coordinated by a staff person in the Provincial Secretariat for Justice. In March 1977, it was funded by a grant from the Indian Community Secretariat on behalf of the Provincial Secretariat for Justice, and the name was changed to the Ontario Native Council on Justice. The grant enabled the council to hire staff and open an office, now located in Toronto. In 1987, the Ontario Native Council on Justice became an incorporated body.

The Union of Ontario Indians is one of the Native political organizations involved in the Ontario Native Council on Justice. Other First Nations associations or organizations include the Ontario Federation of Indian Friendship Centres, the Ontario Métis and Aboriginal Association, the Ontario Native Women's Association, the Native Law Students Association, and the Native Inmates from Provincial Correctional Institutions Association. The ONCJ mission is to support aboriginal organizations and their representatives in the development of initiatives to address justice matters for the First Nations people of Ontario. Its objectives include:

- to act in the development of justice policy and legislation pertaining to Native people, and in so doing, to identify differences and problems and propose solutions;
- to encourage and initiate the development of justice-related programs which are designed and operated by and for Native people; and
- to conduct research and publish material in justice-related areas.

The ONCJ has established ongoing relationships with the Ontario Native Affairs Secretariat, the Ministry of Attorney General, the Ministry of Community and Social Services, the Ministry of Consumer and Commercial Relations, Correctional Services, the Ministry of Citizenship (Native Community Branch), the Solicitor General of Canada, and the federal Department of Justice.

The Native Peacekeeping Symposium, held in November 1990 in Thunder Bay, Ontario, was one of the ONCJ's most recent initiatives. The symposium was sponsored by the Ministry of Solicitor General and the

Ontario Association of Chiefs of Police. Different aboriginal groups brought forth a number of issues and a total of 229 recommendations were made. A special committee within the ONCJ has been formed to examine these recommendations, consolidating and referring them to the appropriate First Nations association/organization. The First Nations organizations will then take steps to carry out the recommendations.

For example, one recommendation was "To establish more Native treatment centres in the northern area." This statement is pretty general; I think it would include family treatment, drug and alcohol treatment, and perhaps a legal centre. Other recommendations include:

- the Solicitor General implement enabling legislation to allow aboriginal representation on police commissions throughout the province;
- a First Nations Policing Policy Centre within the Ministry of Solicitor General be established;
- First Nations' territories be policed by Native people; and
- training about alcoholism and how to deal with individuals who suffer from alcoholism be provided to peacekeepers.

THE FIRST NATIONS POLICING PROGRAM

I became a First Nation constable in 1979, remaining in that position until 1990. I left the position to take a break. I felt that the First Nation Policing Program was not addressing the policing needs of Native people in the province of Ontario.

The training that the First Nation constables receive is identical to that of any other constable in Ontario. New recruits attend an orientation course at the Ontario Provincial Police College in Toronto, because they come under the First Nation Policing Program. Then they are sent to the Ontario Police College at Alymer, where they again receive the same training as any other police constable. The training is very good and is what a police officer would want and need.

But I feel that First Nation police constables should receive additional training. Once they are back in their home communities, they must be able to handle alcohol and drug problems. First Nation constables are currently policing sixty-seven territories. The majority of First Nations councils feel that it is an asset to have a community member policing in their communities.

The program, which was initiated by the Ontario Provincial Police, has been in operation since 1975. While the program has had its ups and downs, and really didn't develop to any great extent during the 1980s, Native organizations are taking steps to gain control over their own policing. The response is very good from all the communities.

Many members of the Ontario Provincial Police are working with the First Nation's program and have put a lot of work into it. In the existing program, there are 130 First Nation constables; we plan to increase that number to perhaps 230. The costs for the program are shared by the federal government (fifty-two per cent) and the provincial government (forty-eight per cent).

Question **Member of Audience**. What about the problems of youth in conflict on the reserves and the role of the police in addressing this?

Response **Ken Dokis**. Youth problems with the law in the First Nations are going to remain until we can develop a better social structure for those communities. It is time the governments of North America start to realize that these communities are going to be there forever, and start taking steps to support some First Nations in improving the social life of the bands—when I say social life, I mean improving employment. With employment, comes a feeling of self-confidence and self-reliance.

Comment **Daryl Webber**. Particularly in the remote areas, kids commit crimes just to get out of the community. They are often bored and lack anything fun or interesting to do. The RCMP have developed the Northern Fly-In Sports Camp; they have organized planes and people to fly into communities and operate a sports camp for the summer period. Statistics indicate that the youth crime rate goes down during the sports camp, because the youth have so much to do. It's very intensive.

Comment

Ken Dokis. I have always felt that policemen should be more involved in communities in such areas as recreation. It doesn't take formal training to throw or catch a ball. The First Nation Policing Program encourages constables to initiate programs in their communities. We feel that band councils or police committees should encourage that sort of participation.

I will give you an example from the city of Sudbury. It's not a First Nation community but I have a brother who is a Sudbury police officer. The chief of police realized that youth problems in the community must be addressed. He directed my brother, who is a Native, to work with and develop programs for Native kids. Once a week, he sets up a basketball or baseball game. This summer, he will lead a four-night camping trip. This example shows that police forces are changing their attitudes towards these problems and how to deal with them. Police officers are a valuable resource that is not being used to its full potential. We need more programs like this Sudbury initiative.

Community policing should be the goal of all police forces. The old methods are not working. We have got to get back to "grassrooting" our police—get them out of their cars. In very remote reserves, the officer is in and out in two days. When you start moving children around from reserve to reserve, and you stay in a community for any length of time, it is very costly. For instance, on one reserve gasoline costs $9 per gallon for one aircraft. It's not so much up to the policemen, rather the people in the community should initiate training to get involved with their own and others' children in the community. Sometimes, it is just too expensive for the police force and government to get involved.

Human relations are an important part of policing. The Ontario Provincial Police offer a quite successful course for constables on human relations. I have spoken with some constables who have taken the course. Some of these guys have been constables for eight, maybe ten, years and they've stuck with a certain attitude toward Native people. The courses are instrumental in altering those attitudes. Unfortunately, not enough of those courses are offered. (I think the OPP can only afford to have two per year.)

Comment **Al Findlay, Aboriginal Policing Services, RCMP, Edmonton, Alberta.** The RCMP have changed their training regimen at the Regina Depot. But the Aboriginal Advisory Committee has recommended that officers get most of their cross-cultural training at the local cultural level, due to the diversity of Native peoples and cultures across the country. Recruits need a basic understanding of Native culture, but it is more important that they understand the local culture and issues of the reserves and communities they are policing.

The band police in Alberta have difficulty keeping officers on the force. They often have a difficult time policing their own people. One band in central Alberta has hired people from outside the community to be police officers. Now, they are able to keep personnel.

Comment **Ken Dokis.** First Nation constables are sworn in under the *Ontario Police Act.* With that, comes the authority of enforcing all laws, whether federal, provincial, or by-laws. The turnover rate is often high, although I'm not sure why. It might be the difficulties associated with policing your own community. Or a result of scrutiny by the Ontario Provincial Police, which oversee the operation of the First Nation Policing Program. Perhaps, it's a failure to give more authority to the First Nation policing organization.

But things are changing. Individual political organizations in Ontario are now working toward developing their own regional policing. That is one reason for my resignation. I no longer wanted to be a First Nation police constable working under the absolute authority of a big sister, the Ontario Provincial Police. I felt that, at some point, we should have become autonomous; that an authority structure should have been developed for First Nation constables. That didn't come about, and now the task has fallen into the hands of the First Nations governments. I hope that will be the solution.

The First Nation constable program has a good relationship with the provincial and federal governments. The OPP has a good handle on internal racism problems. Racism's alive and well, and it's there, but I feel they have a very good handle on it. The courses now offered are improving relationships. We hope that they will improve to the point where the OPP can go to neighbouring provinces and perhaps give some courses to their brother police forces.

We also have a fairly new government in place in Ontario. Bob Rae, the leader of the Ontario New Democratic Party, has said some very encouraging words about working and negotiating with aboriginal peoples. It will be interesting to see what transpires over the next four years.

9

CURRENT ISSUES AND FUTURE CHALLENGES IN ABORIGINAL POLICING

RESOURCE PERSONS

Al Findlay, Constable, Aboriginal Policing Services, RCMP, Edmonton, Alberta

A. W. (Tony) Mahon, Inspector, Aboriginal Policing Services, RCMP, Vancouver, British Columbia

John Young, Constable and Native Liaison Officer, Calgary Police Service, Calgary, Alberta

In this session, police officers representing the Royal Canadian Mounted Police and Calgary Police Service address issues related to relationships between police and aboriginal communities.

ABORIGINAL POLICING SERVICES

Tony Mahon

Before moving to British Columbia, I was in charge of aboriginal policing in the province of Alberta. In Alberta, there is an elders committee that meets quarterly with the commanding officer of "K" Division. He seeks their advice on policing problems in the province. There are also community advisory committees in some areas. The problem is that the initiative must come from the community, rather than the police imposing another committee upon them. We find that this approach does not work.

At the national level, the Commissioner's Advisory Committee is comprised of aboriginal people. They recently visited the RCMP training depot in Regina, were given an overview of the training program, and made some recommendations on cross-cultural training. We rely quite a bit on the elders at the local detachment level. For three detachments in the province, elders have come forward to do cross-cultural, local-level training. When we have a new member going into a Native policing unit, the elder will latch onto him, take him out to the reserve, and teach him a bit about Indian spirituality. Too many times we have found that when we get a recruit in a detachment, his attitude towards Native people has been developed by other senior members. So we like to grab the recruit right away and say, "This is the Indian reserve you will be working on." Or, "This is the Native community you will be working in. Go out there, meet the people." Often in policing, we deal with negative aspects and we never get to see the good side of Native communities, especially when you don't live there.

We also have the PACE program—police assisting in community education. In our forty Native police detachments in Alberta, we tried staffing each with an aboriginal person. We have been successful with that initiative and just recently completed the police assistance community education drug awareness program. We have taught all our aboriginal members how to implement this program in their communities.

A major element is communication: the police have to communicate and community people have to communicate with the police. We have implemented a ride-along program in most areas. Chief and council are given the opportunity to jump in with one of our members while he is on patrol in the community. We are trying to establish what we call satellite detachments in our more isolated communities or storefront offices, depending again on the size of the reserve or the settlement. If it is within a couple of miles of a detachment, we will probably open up what we call a "storefront" office. If it is farther, then we will set up a satellite office.

The biggest problem we face is changing the attitudes of the detachment commanders. If we can change the attitude at the top, then everyone else will follow suit. The detachments are slowly becoming more receptive to suggestions about how Native communities should be policed.

Attitude, communication, and understanding are probably the keys. Part of the problem with regular constables is that they are posted in a northern community for a two-year limit. By the time that the officers establish a rapport with the community, they are gone. The community then has to start over with a new officer.

In British Columbia, we have an annual or monthly report drawn up at the detachment level to be hand-delivered and discussed with the chiefs and representatives of the community.

Question **Member of Audience.** How did the RCMP address the issue of sending Native Indian special constables to police in their home communities?

Response **Tony Mahon.** When the Special Constable Program began, we hired people because of their linguistic abilities and Native ancestry. We put them back in their home communities. We found that we were losing many of them because they were enforcing the law and arresting their relatives. Their families suffered. So we moved them out, but we tried to keep them in the area so they can still speak the language.

The Indian Special Constable Program has been terminated and replaced by the Aboriginal Constable Development Program. There is no more special status. Everybody has to meet the same standards. We find that many people from the aboriginal communities may not have had the same educational opportunities or lack other skills such as driving. The program hires aboriginal people for up to two years, providing training and educational upgrading to grade twelve. As soon as they have reached that level, they are sent into training.

Question	**Member of Audience.** In our area when we were negotiating an agreement to develop our own regional police force, we encountered the problem of fitting our people into the established criteria of the provincial police—criteria such as height, weight, and other standards that our people couldn't measure up to. For example, the height requirement was 5' 8". Most of our people are shorter than that. There are not a lot of tall Eskimos around, so we had to ask the authorities to change the criteria so that our people can get trained and enter the police force. Has the RCMP had to make special adjustments so that aboriginal people can fit the standards of police forces?
Response	**Tony Mahon.** Some time ago the RCMP changed the policy so that height restrictions no longer apply. Our only requirements are education requirements.

CALGARY POLICE SERVICE

John Young

Calgary is a municipality of about 700,000 people in the province of Alberta. I have been a constable for thirteen years and am currently the Native liaison officer for all of southern Alberta. Normally, municipal police officers work within city limits. About ten years ago, we realized that if we were going to have effective liaison and communication with Native communities, we couldn't be bound by those limits. Hence, I travel outside of the municipality and work with the communities around Calgary. There are approximately 15,000 Native and Métis people living in the city. The numbers fluctuate depending on the time of year and may reach between 30,000 and 40,000 in the summertime. Many people who live in Calgary are there for short-term, gainful employment or an educational program. If people leave their reserve community and come into the city of Calgary, they lose many of the benefits that the treaties provide them, including housing. Native people confront many transitional problems coming into the city. Thirteen years ago, the Calgary Aboriginal Urban Affairs Council was created by Native people from all of the Treaty Seven areas. This council reports directly to the mayor and council in Calgary and is comprised of Native people throughout the Treaty Seven area and also Métis.

One community outside Calgary asked for my assistance with a substance abuse program. I asked, "How bad is the problem in your community?" They provided statistics indicating that eighty per cent of their community was alcoholic. The most common cause of death in their community is suicide: about forty per cent of all deaths on the reserve are suicide-related; twenty- to thirty-year-old men were at highest risk. The average educational level in this community is grade eight. This is much lower than the levels for municipalities located right next to them.

So the Calgary Police Service began exploring ways to help the communities address their needs. This was quite a change in philosophy. What sort of needs am I talking about? Education, for example. For the past two years, I sat on the Board of Directors for the Old Sun Community College on the Blackfoot reserve east of Calgary. I also worked with many of the school groups.

I began working with two health groups, one that provided services in the city and the other that covered all of Treaty Seven. We worked with the Native communities to help them become healthier. Obviously, healthier communities are less dysfunctional. Also, I sit on the Suicide Information and Suicide Prevention Training Board, a provincial body that focuses on training Native people in their own communities to recognize the symptoms of suicide so that they can practise effective intervention.

In Alberta, there is an alcohol treatment centre called Poundmakers Lodge. The Neechie Institute's training centre is next door. I am the first police officer to have gone through the entire eight-week program in community addictions. I am still working with the director of the Neechie Institute, which is training policemen to better understand the disease of alcoholism. Most police work is alcohol-related in one sense or another. The officers on the streets start to understand the whole disease of alcoholism rather than creating a revolving door syndrome where we arrest people for being drunk and, the very next morning, they are back out on the street. It is important that we begin to work with people in the community, to try to get them to sober up.

Many police officers resist moving into this role because it is so new. They thought their role was strictly reacting to community problems rather than identifying problems long before they are problems—working with the community.

One thing that we are trying to do is increase the representation of Native people in the police department. That in itself provides some real challenges. I have spoken with many Native people and asked, "Why aren't you joining? What sort of things are inhibiting you? What sort of barriers do you think you are going to face when you get into police departments?" Basically, four major issues present barriers to Native people who may wish to become police officers:

- **They feel that they have a poor education.** There used to be a standard that applicants needed a grade twelve education to apply to a police department. That standard has now changed because we recognized the fact that nothing magical happened between grades eleven and twelve or grades ten and eleven. Many people, including Native people, have an assortment of rich, life experiences that many people who come through university don't have. So, we are developing programs such as the RCMP Aboriginal Constable Development Program to upgrade recruits to meet standards. Currently, the Calgary Police Service sponsors recruits for that training.

- **Fear of the police.** This feeling may be based on personal experience or pressure from other influential family members. They go back to their grandmother or their grandfather and say, "I am considering becoming a policeman for Calgary. What do you think?" They reply, "You are crazy. Don't do it." There is family pressure. So, now we have started an elders advisory council for the police department. It consists of Native people from all of Treaty Seven. These elders can then talk to the family of the potential Native recruit and tell them what they can expect their son or daughter will encounter by going into the police department: here are some of the challenges, here's some of the problems, and here are some of the rewards.

- **Rejection.** The Native people told me that they had already seen, faced, and suffered enough rejection in their lives. They thought that this job was too high on the plateau and that they wouldn't be able to attain it. The last thing they wanted to encounter was more rejection in their life.

This relates to self-esteem. People have to feel that they are worthwhile and that they can do this. The recruitment process has to become more personal. If, for example, we are not having another recruit training class for six or eight months, it is important to keep in very close contact with the Native recruit. "Let's get together for a cup of coffee and talk about where you are at. What can we do to help you out with your physical fitness standards?" The entire recruitment process has to be much more personal. The same idea applies to advertising. You can't throw an ad in the local paper and say, "All interested Native people come on down for recruiting." It has to be personal to make the people feel good about themselves.

- **Prior criminal record.** Many potential applicants feel that a prior criminal record will prevent them from becoming police officers. We need to talk to students in university, college, high school, and junior high who even have a slight interest in wanting to become a police officer. They have to understand the process of pardons, how they can get rid of a criminal record, and what criminal records would keep them from becoming a police officer and which won't. This educational process is fairly easy to address. We also have to train police in supervising Native officers and being more sensitive to their needs. When they are recruiting and training, they need to understand the barriers that Native people feel they are facing so the concerns can be addressed.

Once Native officers are in the department, there must be support systems. For example, if a Native officer asks for time off because his grandmother died, but the records indicate that this was his fifth grandmother, we have to recognize the importance of the extended family. Departmental policies have to be much more flexible.

Native people have expressed considerable frustration with the transfer policy within the police department. An officer may have been working with the community and, just when they have attained a measure of trust with the community, they are transferred to another section in the department. The Calgary Police Service has 1,200 sworn personnel and every two years, there are transfers. The officers who are in the Native liaison section will be sent to another part of the department. Native communities need to communicate directly with upper management in an attempt to have these policies altered. This may mean writing to the police chief or expressing their satisfaction (or dissatisfaction) with the services being delivered.

Often the results of proactive programs such as the one I work in are not tangible. If they say, "John, go out and write traffic tickets," at the end of the day the results are very tangible: "John wrote twenty tickets today." The following week, I write fifteen tickets per day and they say, "Hey, what's happening? You're sliding." On the other hand, when I am working with a community on a suicide prevention program, the results aren't tangible for probably some time. So the administrators, who have control over my promotion and transfer, need to receive correspondence and communication from Native communities and leaders.

Question **Member of Audience.** Where do you get funding to participate with Native communities in initiatives such as the suicide prevention program?

Response **John Young.** My position is in the base budget of the police department and that covers my activities as the Native liaison officer. Outside of that, I have a personal interest in the whole issue of suicide. I joined the suicide prevention group of my own volition.

Question **Member of Audience.** Is there any attention given to the potential conflict between the Native value system and the value system that is inherent in police officer training?

Response **John Young.** One thing that is occurring right now with all of our training, including recruit training and cross-cultural training, is the integration of examples from various cultures.

Comment **Member of Audience, Quebec.** I would like to bring up the issue of trust and respect for police in Native communities. Trust is something that has to be earned. When conflicts occurred between provincial police and Native peoples at Oka, everything went back to square one. At this time, they are being spied on by the provincial police in their own community. There are police officers dressed as telephone repairmen, or hydro repairmen, and they are sent in to spy on the community. In our area, trust will not be there for quite some time.

Response **Tony Mahon.** Good point. While doing a study of policing services in Alberta, I sat down at a tribal council meeting in the northern part of the province and stated that we would be willing to open up a work station in their community. We wanted to have an advisory committee to set up some school programs. An elder said, "For years and years now your people have only come into our community to take people away. You have never stopped to talk to us. You don't get to know us. And now you come in and tell us that you are ready to set this up." He said, if we took the time to gain their trust and respect, then perhaps they would let us set up the work station. But, he stated, "Don't come in here and tell us that, because you are ready to do it, that we should be, too."

This is a very good point. I would suspect that, in any area where we are successful, we will find that there is a balance between reactive policing and the amount of time that we as human being take to interact with the Native people. You can't place a value on a cup of coffee or a cup of tea in somebody's home. It's amazing how much credibility and respect that gets you in the community. By sitting down and listening to some of the elders instead of going in as a regular policeman, doing your work, and getting out.

I try to identify things that can be done to enhance the credibility of our police officers in communities so that they are better able to provide services. I look back at my own career in the RCMP—nearly twenty-one years ago. Going to northern Alberta was like going into another world. I recall very early in my service driving onto a reserve that I was responsible for and noticing how the people there lived differently than I did. I didn't feel welcome. I felt like I was really out of place. I had no understanding of the culture. So I had no understanding. Nobody had prepared me for that community. I was a very good police officer under my statutes and the provincial law. I knew what was right and what was wrong in my own value system.

My primary contact with Native people was in the bars on Friday and Saturday nights. It was very, very uncomfortable. The only people I had an opportunity to deal with were those people who were intoxicated. I said to myself, "How can that change? How can we deal with that? How could we make our members more sensitive to Native peoples and their culture?" We have cross-cultural courses in Regina at the RCMP training depot that give only a very general overview of the issues. When police officers go to a specific detachment, they have to know something about the people.

We have got ourselves into an awful lot of trouble in the last ten or fifteen years. When we started one or two guys in cars, that was probably the worst thing we ever did, because we isolated them from the community. We got them away from the community. Many people come into policing with a negative stereotype of aboriginal people. We are beginning to find out how special Native people are. How fascinating as personalities and how nice and humorous they can be and how much friendship can be developed. The nice thing is that, when people in the community see a police officer, instead of saying, "There's a policeman," they will say, "There's Bob. He's working today." I think that is the kind of relationship we must develop with the communities. We need to take things right down to the community level. Because every community is so different.

Question **Anne Kennedy, Department of Justice, Nain, Labrador.** I am an adult probation officer. One of the difficulties I see in the police developing relationships with the community is that they are so overworked. The officers on the north coast of Labrador are working constantly seven days per week, all hours of the day and night. They don't have the energy nor the time to even see their families, let alone spend time with the community. Quite frankly, I don't think one or two days does it. I think one or two months might do it, might make it possible for a person to go in as a person rather than as an RCMP officer or probation officer.

Prior to becoming involved in corrections, I worked with children in an alcohol program. I was seen in a very positive light, even though I was an outsider, a woman, and white. As soon as I switched over to corrections, all of those barriers went up. There are many homes I cannot go to on Sunday afternoon because of what I represent in the community. Regardless of my personality and my attitude, I am the probation officer.

Comment **Member of Audience**. Maybe the reason that you can't go in and have tea is because of your position of authority in that community. The people fear that authority and how the power you wield affects them. You must demystify yourself in the community. I think you will find that the community will be more receptive to you.

Comment **Ralph Taylor, Chief of Police, Dillingham, Alaska**. I've been in a community for almost eight years. For part of that time, I handled the majority of the cases. But when I went to talk to people, I never introduced myself as Officer Taylor, "This is what I am here for." My thoughts when I went in were, "How would I like to be treated if I was in this situation? Do I want to be treated with respect?" And I do. I like to be treated with respect. And I have found that when I treat people with respect, when I take that extra time to stay a moment or two after the call to talk, that rapport was built. It wasn't something that happened overnight. It wasn't something that happened in a year. It took years. It took years of taking this extra time. I lost a lot of my time, but it was worth it. There are a lot of homes other people can't go into that I can.

If we make that extra effort, there will be a time when you can be accepted. I had horrible things said to me. I had my life threatened on several occasions. But I have also been able to laugh at myself and see that people are deserving —special—no matter what they do to you.

Comment **Howard Amos, Village Public Safety Officer Coordinator, Bethel, Alaska.** In Alaska, there is a Village Public Safety Officer Program. I am the Coordinator for the Association of Village Council Presidents. Captain Glen Godfrey is the state trooper coordinator. He is allotted a certain amount of money for the program. He works with ten different Native non-profit corporations to administer the program in each village.

Every year in June he signs a contract with each of the non-profit corporations. Each non-profit gets a contract stating how much they can pay their village public safety officers. It is up to us to recruit and hire those officers. They are employees of the Native non-profits, but they have three supervisors: the Native non-profit corporation, the Alaska state troopers, and the oversight state trooper.

Each one of them has a state trooper to look to for advice on law matters. Each of them also has a village council or city council that will write a job description. They'll follow those job descriptions, enforcing local ordinances and state laws for the city or village council. They wear uniforms and are recruited from the village or region. Some officers are from outside the region, but that is at the request of each village.

It seems to be working fairly well. Rather than having the stigma of a large organization, and coming in and saying, "This is what you will do. These are the laws that you will follow," it's more like, "Here's the money. Go ahead and govern yourselves." The Native non-profits are made up of members from each village. In a sense, we are governing them. I think it is possible to have brown faces behind the police uniform. The system is not perfect, but we are able to recruit officers from the villages, train, and deploy them back into their villages. Then they will be not so much a law officer but a safety officer, enforcing the safety standards of the community.

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10

POLICING IN GREENLAND

RESOURCE PERSONS

Jens Wacker, Chief Constable, Nuuk, Greenland

Jens Henrik Hojbjerg, Deputy Chief Constable, Nuuk, Greenland

This workshop addresses operational and statutory aspects of policing in Greenland.

BACKGROUND

Greenland is the largest island in the world, with an area covering well over two million square kilometres. The interior of the country is covered by an immense ice cap. Due to this fact, it is only the ice-free coast area that offers the 55,000 inhabitants the possibility of making a living. The ice-free area and the surrounding islands together cover an area of 350,000 square kilometres; this considerable region stretches more than twenty-four latitudes from north to south. The width of the ice-free land varies from a few kilometres to 250 kilometres. From north to south the ice-free coast covers more than 2,500 kilometres.

POLICING

Like the small Atlantic group of islands called the Faroes, Greenland forms part of the Kingdom of Denmark, and, like the Faroe Islands, it has extensive autonomy. Questions concerning the police, however, are not within Greenland's authority. As a result, police in Denmark, the Faroes, and Greenland form one corps directly employed by the Danish state. We also don't have a police act in Greenland or Denmark; the basic principles for the activities of the Greenland police appear in Greenland's *Justice Act,* which stipulates that the police are directed to ensure that legislation is respected, take action against violations of legislation, and perform preventive work.

The police in Greenland are directed to perform the same duties as the police in Denmark according the *Danish Justice Act.* However, the multiplicity and the character of the tasks that we deal with, and the conditions we work under, make it difficult to draw a fair comparison between conditions. The geographical position of Greenland means that the police operate in an area that comprises some of toughest polar regions in the world. In addition, the social, cultural, and developmental conditions are very different from Denmark.

The Greenland police are directed by the Chief Constable's Office in Nuuk, which includes the chief constable, a deputy chief constable, three deputy assistant chief constables (who are all jurists), a police chief superintendent, a secretariat, and servant clerks. The chief constable is responsible for administration and prosecution in all police districts. He also takes care of the administration of institutions for convicts. In performing these tasks, the Chief Constable's Office has almost daily contact with the Danish Ministry of Justice, the Office of the National Commissioner of the Danish Police, and the state attorney in Denmark, who has supreme power to initiate prosecution in the Kingdom of Denmark. Only serious cases concerning the commitment of criminals to Danish mental hospitals or psychiatry institutes must be submitted to the state attorney. In all other cases, the chief constable can independently initiate prosecution.

The Police Training College of Greenland is adjacent to the Chief Constable's Office in Nuuk. The daily training is directed by two Greenlandic police inspectors, with the aim of providing Greenlandic police officers a relevant education through fundamental, refresher, and station manager courses. Part of the fundamental and special education of the police officers has, until now, taken place at the police training college in Denmark. In my opinion, this combination has been good: basic training in Denmark and then further education in Greenland that relates to a specific conditions in Greenland. Each year, we educate five to ten Greenlandic police officers. Next week, a class of Greenlandic probational police officers commence police training that is expected to take place in Greenland with the exception of two months of specialized training in Denmark. If the course meets expectations, the four-year training of Greenlandic probational police officers will probably be permanently moved to Greenland.

The police district of Greenland is divided into seventeen police regions in which the population varies. This is reflected in the staffing of the police stations. The biggest station is situated in Nuuk where approximately twenty police officers are employed. Smaller stations have only one police officer and one or two auxiliary police officers. At present, the total police force amounts to 105 persons. Eighty-one police officers are Greenlanders and twenty-four police officers are Danish staff. Furthermore, we now have thirty-eight auxiliary police officers and sixty-one municipal executive officers and assistants. The auxiliary police officers do not have any police training, and, in the biggest towns, they act as bodyguards for police staff. Northern municipal executive officers have had police training. They are people with another principal occupation who have been given police authority by the chief constable. They take care of tasks in remote and often sparsely populated settlements. In cases of serious crimes in a municipal executive officer's district, assistance is immediately requested from the police station. In the summer months, twelve police officers from Denmark are made available as holiday relief. Officers later return to Greenland for a longer rotation of two to five years. For several years now, a fixed number of twenty-four officers have come from the Danish police.

The police in Greenland—also called state police—are not divided into a uniformed police force and a criminal investigation division. Danish and Greenlandic police officers participate on equal terms in solving all tasks that the police are directed to attend to. In many ways, the seventeen police regions enjoy considerable independence. For instance, they are authorized by order of the chief constable to initiate prosecutions without first submitting the case to him. This includes both criminal cases and special legislation violations. Local police constables appear as prosecutors in Greenlandic local courts in all types of cases. All local justices are lay persons without any formal legal education or training.

The tasks of the police in Greenland are multiple and varied. It should be mentioned that the customs and excise cases in Greenland are within the jurisdiction of the police; they constitute a field of activity that makes heavy demands. In 1990, the police had 4,775 bailiff cases and about $2 million (US) was collected for creditors. As a local state authority that is represented throughout Greenland, the police also participate in child custody cases including, for example, adoption. The management of the Greenlandic search and rescue service is divided between the Command of Greenland under Danish Naval Defence and the chief constable. The Command of Greenland is responsible for the management of the Sea Rescue Service, which involves the search for and rescue of persons in distress from vessel of any kind above or under the sea level; this applies to operations at sea from the air or on land. The chief constable, however, is responsible for the management of search and rescue operations in local waters and for search and rescue operations on land.

If an operation in local waters develops into a bigger task than police resources can handle, the chief constable may ask the Command of Greenland to take over management of the search and rescue operation. Eight police boats are available in the local waters. These police cutters, stationed off the west coast of Greenland, are operated by forty-three Greenlandic crew members. In 1990, the police performed 167 search operations on land and at sea. In several instances, these operations were performed by helicopter from the inspection Naval Defence ships or chartered with Greenland Air. During the last couple of years, we have experienced the increasing tendency of Greenland Search and Rescue Services to be burdened by adventurers who have thrown themselves into risky ventures, especially on the ice cap; many lack qualifications and have poor, inadequate equipment.

The fact that police deal with all these tasks, besides the main task of fighting crime, means that the relations of police with the population of Greenland is very important. I have the impression that the population feels that the police play a very constructive part in making Greenlandic society function; but the main task of the police is, of course, to combat crime. Crime in Greenland is generally characterized by high frequency, even if the total number of violations has been decreasing in recent years. The picture is primarily characterized by a proportionally larger number of serious crimes with serious consequences for the victims, including homicide, attempted homicide, assault and battery, and rape. Eighteen homicides were committed in 1988; thirteen in 1989; and twenty-three in 1990, the largest number so far. In the first three months of 1991, six homicides were committed. The number of attempted homicides typically varies from thirty to forty per year. Incest, sexually intimate relations with children, and indecent exposure are also frequent offences. In 1990, we had 325 reported cases of incest, an increase of about 100 per cent since 1985. The reason for this dramatic increase in the number of reported cases is presumably not that more sexual crimes are committed today but rather that the Greenlandic population has begun to report more of these crimes. With the involvement of feminist organizations, Greenlandic media have also given more recent attention to the issue of incest.

The abuse of hash has also become very widespread in Greenland. On the other hand, we have not been able to demonstrate any abuse of stronger drugs such as cocaine, amphetamines, and heroin. We have made an effort to stop hash importation into Greenland, but, due to the relatively limited resources available, our main strategy is that we try to prevent hash importation and distribution and to seize the principals. This strategy is an alternative to fighting hash-related crime in the streets where the result would often be just a few grams of hash confiscated from individuals.

In 1990, police confiscated about sixty-three kilograms of hash in Greenland; in 1989, only about twenty-six kilograms were seized. The cases are growing bigger and bigger and more complicated; they are making heavier demands on the police. Police dogs in the individual police regions have gone through entrance training to learn to point when spotting hash; the dogs have proven to be a very efficient aid in the fight against hash crimes. Furthermore, it is our impression that using these dogs has preventative effects.

Extremely large profits are connected with hash crimes. For example, one gram of hash can be obtained at a price of thirty to thirty-five Danish kroner in Copenhagen; the street price in Greenland is 100 Danish kroner per smoking lump. (One gram can yield four to five smoking lumps.) Even if we do confiscate lots of hash, we are also quite aware that considerably more hash is imported into Greenland than we manage to confiscate. In spite of the very high frequency of serious crimes and hash crimes, we have been faced with very few other crimes.

The chief constable is responsible for the administration of the institutions for convicts. We have three in Greenland housing seventy-six convicts. These institutions are constantly overcrowded. Most people serving a sentence in an institution have been sentenced for homicide, attempted homicide, rape, sexual crimes against children, and coarser examples of assault and battery. Criminals sentenced for hash-related crimes are beginning to constitute a high percentage of the institutional population. According to the Criminal Act, it is possible to sentence a person to imprisonment for a specified period of up to ten years, but rarely are criminal offenders sentenced to more than six years' imprisonment. Typically, a convicted murderer who is not mentally deranged or psychologically abnormal is sentenced to serve five years in an institution for convicts. The person may go to work outside the institution after one month inside and will be given additional liberties as well. Very few people who serve a sentence in Greenland's institutions for convicts commit a new crime during their sentence, despite the relatively lax conditions. The modest capacity of the institutions compared to the crime level means that we presently have thirty persons, sentenced to be placed in an institution, who are free while awaiting their term of imprisonment. This is naturally a very, very unfavourable development. We also currently have twelve to fifteen Greenlanders serving indefinite sentence in a psychiatric prison in Denmark. The convicts in question all have been convicted and sentenced for homicides, rapes, or other serious crimes. They are serving their sentences in Denmark as the conditions in the older prisons in Greenland do not provide sufficient security.

Serious criminality is a concern to the police. Even if we do not know the reason why an individual becomes a criminal, it is fairly easy to point to some elements from the 1960s through today that promote crime. In the course of very few years, Greenland has been exposed to enormous economic, social, and cultural changes, with subsequent consequences for the individual. Considerable migration from the settlements to towns has also occurred.

Today, only a minority of the population in the settlements makes a living by traditional hunting and fishing. For this reason, the housing situation and conditions of life have changed radically. The support and care that exist in a small regional community have been replaced by the anonymity of life in the larger society. The family structure has changed and many homes have videotapes and access to programming on several television channels. These changes have resulted in many advantages for the individual as well as for the society, but the development has not been cost-free. First and foremost, the traditional lifestyle has been destroyed and replaced by new lifestyles or perhaps none at all. There is no doubt whatsoever that this process and lack of standards have the effect of promoting crime and form an essential part of the explanation of Greenland's enormous crime problems. At the same time, the most significant element contributing to crime in Greenland is alcoholism. The majority of crimes are committed by people who are under the influence of alcohol, with this tendency most evident in serious crimes. Most criminals in Greenland commit crimes due to bad conditions during their childhood and adolescence: they grew up in a socially poor environment characterized by violence and abuse. They were not raised properly because their families were disintegrating because of alcohol abuse. Only a radical change of attitudes towards alcohol in the whole population or perhaps a strict rationing of alcohol would solve the crime problems. It may even be necessary to introduce alcohol prohibition.

It is also essential to understand that crime in society is a public concern that pertains to whole populations and all institutions in a society. Crime should not be considered an isolated problem that primarily has something to do with the police; this would result in the general public feeling that crime problems would be solved by giving more resources to the police—recruiting more police officers or building more prisons. This attitude is not uncommon in Greenland. As a result, it is difficult to establish constructive debate about crime.

Prevention is better than cure and we have to concentrate on social conditions to prevent crime effectively. In more towns in Greenland, police participate cooperatively with social services and schools with the aim of identifying early danger signals to ensure that crime does not occur or develop. This cooperation is rather new in Greenland but we hope that it will develop consistently in the years to come and be extended to include more towns and regions.

In the future, we expect that police activities will increasingly be characterized by the use of technology, including new radio data transmission systems. The future may also bring a change in Greenlandic rescue service organization, with the police assuming a different role. We also have to anticipate considerable expense for necessary renovations of the police cutters, which play an important part of the rescue service.

Generally, we do not expect that the nature of police activities will change radically in the next few years. One problem we will face is more Danish criminals. Three or four years ago, we didn't have any Danish criminals, but they now travel from Denmark to Greenland to sell hash and make great profits. As a result, we have four Danish criminals in our correctional institutions. We expect many more Greenlandic police officers will be educated, so Danish staff will only be needed in Greenland's police force in exceptional cases; however, Greenlandic police officers must meet the condition that they will stay in the police force for many years after their education. For a period of time, we have had some problems keeping the Greenlandic police officers in their jobs.

The reason is that it has been and still is possible to obtain higher salaries in occupations other than the police force. However, we feel that this development has reached a turning point due to a general economic decline in Greenland. We also anticipate an increase in salaries for the Greenlandic police corps, who so far have had a lower salary than the Danish staff. In any case, we will have to maintain close cooperation with the special branches of the Danish police forces, including the police laboratory and investigations specialists and the travelling investigations section. Whether the police in Greenland remain part of the Danish police directly under the Danish state or whether they will be under the authority of the home-rule government is a political question. Present legislation makes this latter alternative impossible.

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11

THE RELEVANCE OF COMMUNITY LEGAL SERVICE CENTRES

RESOURCE PERSONS

Heidi Breier, Executive Director, Arctic Rim Law Centre, Tuktoyuktuk, Northwest Territories

Agnes Krantz, Lawyer/Director, Keewatin Legal Services Society, Rankin Inlet, Northwest Territories

Douglas Miller, Executive Director, Legal Services Board of the Northwest Territories, Yellowknife

This workshop describes community legal service centres in the Northwest Territories, outlines an ideal legal services centre, and examines the implications of legal service provision for self-sufficent northern communities.

LEGAL SERVICES IN THE NORTHWEST TERRITORIES

Douglas Miller

The mandate of the Legal Services Board of the Northwest Territories is to provide legal services to all residents of the Northwest Territories. It is, in essence, a legal aid system. Part of our responsibility is to devise systems for providing legal aid services to the various regions of the territories. The Northwest Territories covers a vast area—a third of Canada and equivalent to nearly half of the United States. Cultural and ethnic differences and travel requirements are all factors to consider in providing services. We are also responsible for providing information about the justice system and the administration of justice: we help people identify legal problems.

The Legal Services Board encourages community groups to indicate to us the services they would like to have provided. In the early days, legal services were typically provided by lawyers on the court circuit: they would fly to the region and then back to Yellowknife. Because community residents felt that they were not getting good access to legal services, leaders in several communities indicated that they wanted assistance in setting up a law centre. Sometimes, such requests were politically motivated. An aboriginal organization would indicate "We think we need this." Then they would invite the Minister of Justice, who would refer the matter to the Legal Services Board. The Board would react by conferring with the group, saying, "Yes, we think it is probably a good idea that you have a centre in this region." We would next try to secure funding to establish a centre. At the same time, we would be working with people in the community to establish a board of directors, because under the *Legal Services Act*, the community-based organization is incorporated as a non-profit society with its own board of directors. The objective of this approach is to make the services more relevant, meaningful, and acceptable to the communities.

Question **Member of Audience.** Are there any regulations regarding the community-based board of directors that encourage community residents to become involved? In Ontario, it is very hard to get residents to stand for election. The boards of directors have no interest in encouraging a broad base in the communities and no regulations require a broad base. So, often only very narrow interests are represented in communities.

Response **Heidi Breier**. The executive director of the community legal centre should be involved in this process. He or she should help build a broad base because this person would be aware of the important legal issues and should recruit members for the board of directors. But this is probably more of an ideal than reality.

Response **Douglas Miller**. It is often hard to get people together in the communities. Aboriginal people are the majority of people on all boards in the community organizations. But it is difficult to get people interested. Because the Legal Services Board is basically a non-Native organization, we deal with the non-Native justice system. To a large extent, we are asking Native people to serve on a board of directors that has no relevance to them. There are also language problems. After the program is operating, the law centre can do community programming and development. It would be naive to think that this process will happen overnight.

As people get to know about the centre, they phone, apply for legal aid, or any number of other services. But development is obviously slow and the Legal Services Board is trying to provide as much support as possible, including ensuring that the centres have adequate funding to carry out their mandates.

All programs, including the courtworkers, have been community initiated. Often a stumbling block is getting available money committed to legal aid. The community came together, for example, and said, "We would like to have a courtworker." So, the development started off with a courtworker. Then, after a couple of years, community members decided they would like to have a legal aid centre. So, the Legal Services Board met with the community to collaborate on plans. The Board assists with incorporating the organization, drawing up by-laws, and establishing a board of directors.

Many communities are rediscovering their traditional methods of resolving disputes. Unfortunately, what has developed is total reliance on the Canadian legal system. Beginning with reporting an incident to the police, the wheels of justice start grinding, albeit sometimes slowly, to deal with the situation. I remember a case in Baker Lake where the kids sprayed a teacher's notebook with paint. She reported what became a mischief charge and the incident ended up in youth court. Fortunately, the Crown attorney in that case withdrew the charge. But it was embarrassing.

The housing authority may want to lay charges when a window is broken, because that is the only way to receive compensation for damages. In the north, we are confronted with many cases that could be resolved by dispute resolution. But, because of the dominant legal system, they aren't. Our caseloads are tremendous. The managers of many northern stores report every case of shoplifting, even if the person was not successful in getting out the door.

One thing I hear from the clinics is that they don't feel we are fulfilling our mandate. The civil work often gets put aside and referred to lawyers in Yellowknife so that the legal clinics can deal with criminal matters. Even though the legal centres were not set up as public defender agencies, they are, to a large extent, because of the overwhelming criminal caseload. We are confronting this issue but are not quite sure how to deal with the problem.

Question **Member of Audience**. What about the issues surrounding the return of communities to a traditional justice system? How does that affect the work of the community legal service centres?

Response **Heidi Breier**. No matter where a Native community is in Canada, it is going to be confronted with Canadian laws. So, people have to understand those laws. It doesn't matter if they agree with them or not. Or even if those laws are in conflict with their traditional laws. An understanding of Canadian law is still a basic necessity: people need to know their rights and obligations in the community. I think that's the role of the community legal services centre: to ensure people have some tools they can work with.

Follow-up Question

Member of Audience. But don't you find that prior to creating the legal service centre, maybe fifteen applicants were registered in family law. And this number then may jump to 200 applicants. And, perhaps, these cases would have been resolved in other ways prior to the centre being established?

Response

Heidi Breier. Of course, the availability of services will result in an increase in use. I don't think that these issues would have necessarily been resolved some other way. If they weren't dealt with, people were abused, stepped on, or misused by other people in the community. The centres provide remedies that people didn't have available to them in the past.

If a community wants to move in the direction of adopting more traditional mechanisms for addressing issues, then the centres can play a role in that as well. They can also assist and coordinate various initiatives. The local board of directors is not intended to be intrusive: they are not to foist something on the community that community members don't want. In providing legal aid services or public education, there is going to be some benefit to the community. No matter how you cut it, it is going to help.

Response

Member of Audience. I don't agree. I don't think it's as clear cut as you say. While people may have some say in the operation of the community legal service centres, there is a fundamental contradiction between supporting the dominant legal system, and its role in Native northern communities, and supporting traditional justice systems. The values that go along with the dominant legal system need to be addressed.

This is not to say that community centres don't have their place and that they can't play a supportive role. But communities have to recognize that legal centres may not be the best catalyst for the development of alternative methods.

Response **Heidi Breier**. I don't think that's true. I think that, because we are community-based, we would hope that the community would have input. We are not in a dominant situation in the Northwest Territories. You've got to remember where we are living and the environment in which we are offering the service. Tuktoyuktuk has 900 people. In winter, it has an ice road; in summer, you gain access by boat, which takes a couple of days, or airplane. Essentially, you fly everywhere. I very seldom get out.

Few people of my racial and cultural background live in the community. If you are going to offer services in that environment, you certainly must learn how to adapt to and meet the needs of the community—in personal relationships, policies, and approaches to delivering services. What works in southern Ontario, in terms of community development and even case-by-case problem-solving, doesn't work in Tuktoyuktuk because we serve different people in a very different environment.

THE KEEWATIN LEGAL SERVICES SOCIETY

Agnes Krantz

As someone who pushed to have legal services created, I have never viewed the centres as the basis for the development of traditional Native law. If Native people want Native law revived, they are going to have to do it through a Native system. Legal services are, by definition, a southern-based system. But you can't hold legal services guilty because the Native people haven't developed their own. The only way Native people are going to develop their own laws is by doing it themselves.

Rankin Inlet is a community on the west coast of Hudson's Bay. Before the creation of the Keewatin Legal Services Society in April 1990, the area had no resident lawyers and no community law office. Lawyers only came in with the circuit court.

I live in Rankin Inlet. I try to serve the rest of the communities by telephone, and also by visiting communities that will have a heavy court docket. People charged with offences can go to their lawyers and they will know who their lawyers will be. They know the lawyers won't change from first appearance to trial date, or from first appearance to preliminary hearing to trial date.

I am in a better position to get to know the families in the communities. I may have represented other family members on previous occasions. But the system is still not satisfactory because often I don't get in to the communities except with the circuit court. If there are only two people in Coral Harbour, and it costs me $900 roundtrip to go there, I don't go in for a pre-trial conference. My budget doesn't go that far. On the other hand, I may go into a community several times before the circuit court arrives, if there are a large number of offenders.

It is important to understand the environment in which we work. There is a very large population of youth with a maximum grade seven or nine education. In many communities, there are major unemployment and criminal justice problems. We are dealing with people who need an introduction to the justice system. When I began going around to communities like Baker Lake, I didn't say, "Well, I'm here in town now. My clients can come and see me." They have no concept of what it is you do. I went and knocked on their doors, and said, "I am your lawyer. Now come and see me or I will talk to you here or whatever you want." I get very aggressive about this. I've got my list of who is charged and who is going to be on the next list. I do my best to see that I talk to everybody. And I do that by going out and finding them. In the past, the police used to round up the defendants so that the lawyer can talk to them. I don't use the police. I am friendly with them, but I don't use the police to be my dog. I do it. I walk. That's quite right. People in Baker Lake now know who I am and they say, "It must be Court. Agnes is in town."

We have established a courtworker in two additional communities. I have to hire local interpreters because English is very much a second language. The predominant language is Inuktitut. Even young people who have gone to school—and theoretically have been educated in English—have a very limited understanding of English. I feel more confident that they understand what I am talking about if I use an interpreter. The court proceedings are not interpreted as much as I would like. We need public school education so that people understand the justice system and how it affects their lives.

When I arrived in Rankin Inlet, there was a board of directors. None of the people had any experience with the criminal justice system, so we had to start educating them before they could go back and represent the community. In itself, that was a very important job. It took a year before we got organized so that we could have three days of education for the board. It all takes time.

English is the second language. If I didn't talk to myself, there are days when I wouldn't hear English spoken. Since we try to serve the area by telephone, we have speaker phones in my office, because, if people from Coral Harbour call me, I have to have an interpreter. We really run into problems with people who are in custody: there is no point to their phoning a lawyer because there are no bilingual lawyers in the Northwest Territories. So courtworkers have become an extremely important element in the delivery of criminal justice services.

THE ARCTIC RIM LAW CENTRE

Heidi Breier

The Arctic Rim Law Centre operates much the same way as the Keewatin Legal Service Centre. It is a few years older, although it didn't have an executive director before I started working there. In the office, we had two pads of paper and three pens. No resources at all. No pamphlets, no information, no filing system, no client ledger list—nothing. No administrative set-up. During our first year of operation, we've been concentrating on getting the necessary administrative staff in place. We are developing personnel, client eligibility, and fee-for-service policies.

The office is operated on a drop-in basis. I never schedule appointments. I take telephone calls on the same basis. Anybody can come in, call in, or drop in for free advice and referral on anything. If I don't have the expertise, I will provide the necessary referrals. Our office has a secretary, an administrative assistant, a full-time courtworker in Tuktoyuktuk, and a part-time court worker in Holman Island.

The circuit court comes into Tuktoyuktuk on average once per month, with usually 100 to 195 entries on the docket for any one sitting of the court. That translates into anywhere from 60 to 100 people who are being charged. I would describe Tuktoyuktuk as a dysfunctional community: it is extremely violent. Many of the crimes are against persons, involving assault causing bodily harm or spousal assaults. There are not many sexual offences. Property crimes, such as arson and robbery, and weapons offences are fairly common. There is also considerable alcohol and drug abuse in the community and a fairly high caseload for civil matters.

The community includes a mix of Inuit and white persons. Other people come up, some just temporarily who remain outsiders and some who integrate into the community life. The Inuit people fall all along the cultural spectrum. I might be talking with an elder who is very traditional and doesn't speak English. This person may have a very different world view from the offender who speaks only English, doesn't want to go out on the land, and isn't interested in the spring hunts. For many people, especially the younger ones, the only way out of the community is to commit a crime. It is just like going to university for middle-class kids from southern Ontario.

As of March 1991, I had opened 200 files. Sixty-five to seventy per cent of these cases are criminal; the rest are a variety of family and civil cases such as welfare appeals. Landlord and tenants cases as well as unemployment insurance appeals are also common. Ideally, the legal clinics should not be doing criminal work: we should be concentrating on civil matters. That is where the crux of the educational process can take place; where we can fulfill our mandate. The greatest need, however, is in the criminal area.

In the year that I have been in Tuk, I have noticed a tremendous difference in the way I am treated by the people in the community. When I first started working there, I was viewed as any other lawyer coming in. Nobody knew who I was. When I interviewed clients to get their stories, it didn't seem to matter what interview techniques I used: I would get very little information.

I have changed my procedures. I have slowed down and do not talk so fast. I listen better. People now know who I am and they trust me. An important part of delivering legal services in small communities in the north is developing personal relationships. Most Canadians don't need to have a personal relationship with their lawyers. That's the last thing that they want. But for most of my clients, it is very important that they know me as a person, and that I speak with them not only as my client but as a person. It is not possible to do that when you are travelling with the circuit court. You don't have time. You are pressured to hurry, hurry, hurry. As I have gotten to know the people, I find that I am getting whole stories. I am finally starting to be told the real stories of people's lives, needs, and the ways they have grown up.

Question **Member of Audience**. What would the ideal community legal services centre look like?

Response **Heidi Breier**. The first thing I would do is to put all executive directors on straight salary. The way we are paid is quite bizarre. We are paid a salary for our executive director position and we bill legal aid for representing clients on circuit. We are also allowed to take on private legal work. This situation creates an impossible conflict of interest for anyone except people with the highest integrity. Even then, it is very difficult because you have privately retained clients and legal aid clients. You tell me where you think you are going to put your efforts, unless you apply some very strict guidelines to yourself.

Second, I would keep the legal services centre community-based by having an independent board of directors. This is critical for community input on the types of legal services that will be provided. While the legal clinics in most provinces will be governed by a legal aid act or similar eligibility legislation, the clinics should individually determine some of their legal and client eligibility policies.

Third, enough lawyers should be available so that we can do civil work as well as criminal representation. We should put emphasis on training courtworkers for a role expanded beyond their present activities. The role of the courtworkers in the Northwest Territories should be that of a properly trained paralegal who works in a clinic and who can take on cases that really don't require a lawyer.

Fourth, I would ensure that, even within a system where the legal service clinics were somewhat independent, specialized training and resources would be available, including library and administrative resources.

Fifth, the clinic should move to a broader funding base and should not be dependent upon the territorial government. The clinics should take on test cases involving Native justice issues. The only way this will happen is if the clinics are funded by Native associations. This role is really important for the future status of the clinics: we should be putting an emphasis on test cases instead of just acting as a "first-come, first-served" legal service.

Sixth, the ideal legal clinic would do a lot of public legal education.

Comment **Agnes Krantz**. A significant number of cases haven't gone to court because I am a resident of my community. In looking into a case, I am able to talk to people and develop a good defence. I call up the Crown attorney, and say, "I have a good defence." After checking with the police, the Crown agrees and they call off the prosecution. However, we haven't encountered any cases where disputes have been resolved between the parties rather than charges being laid.

Question **Member of Audience**. Has there been an evaluation of legal services in the Northwest Territories?

Response **Douglas Miller**. It is a matter of funding. In 1989, we were scheduled for a major evaluation of all programs that was to be funded by Justice Canada and the territorial government. But with funding cutbacks at the federal level, the evaluation fell by the wayside. Right now, an internal task force is being set up to make some recommendations on legal services delivery. Part of the clinic system is being evaluated, but the review would have been more extensive had the larger evaluation been done.

Question **Member of Audience**. Are you going to be able to justify the high costs of service delivery?

Response **Douglas Miller**. It's a reality. But it's hard, once you have a formal set-up, to then say, "No, it's not worth it anymore." I think the view is that, for better or worse, legal services centres are going to be set up in the regions, especially where no resident lawyers operate. We haven't had as much demand for a centre from communities with resident lawyers.

When we were working on the Tuk centre, people in Inuvik talked about why the centre wasn't being located there. We said, "Well, if you want to apply to the Legal Services Board to be appointed as a regional legal services committee, get together a proposal. We will help you with it." Nothing came back from them. People will bitch about not having a lawyer, but they won't take any concrete action to do something. The Legal Services Board is not a missionary organization, although we do go out and promote to a degree.

There may not be much growth in legal services, but you couldn't take the centres away now. You couldn't take the office away. If one lawyer left an office, you could perhaps stall for a few months before you hired the next one.

Looking down the road, I think it is safe to say that we are going to have more difficulties. It's not going to be easy setting up clinics along the ideal lines that have been suggested. That goal would be virtually impossible. It would be impossible to get staff. We have been fortunate with the people we have been able to attract so far. But the package that is offered to attract people will have to be constantly improved. To bring people into northern communities involves housing considerations, relocation expenses, office equipment, and a variety of other things. We are talking about spending at least thirty per cent more than what they are paying in Winnipeg. Usually, someone in Ottawa doesn't understand why it is so expensive. So, you have to spend time gathering statistics to show why the legal services centres need the money.

12

THE NATIVE COMMUNITY LEGAL EDUCATION CENTRE IN SOUIX LOOKOUT

RESOURCE PERSONS

Sharry Aiken, Director, Native Community Legal Education Centre, Sioux Lookout, Ontario

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This discussion focuses on the successes and challenges encountered in setting up the Native community legal education centre in Souix Lookout, Ontario.

INTRODUCTION

We work in a very isolated region. We deal with programming specifically for Native people in the northern part of Ontario. Four major treaty areas are included in our region: Treaty Number Five, Treaty Number Nine, Treaty Number Three, and the Robinson-Superior Treaty. It is a very, very large region—approximately the size of France.

Many communities are isolated, with the only access to the community by air. Thirty-three communities are "fly-in" only; that has a big impact on access. The living conditions in those communities are quite poor. Imagine living in a house with no indoor plumbing and going to the outhouse at forty below. This is the situation you will find in these communities.

The region also encompasses urban, "drive-in" areas, which may be within an hour of places such as Kenora and Sioux Lookout. So, you're dealing with very disparate situations across the north of the province, with communities cut off, to varying degrees, from urban areas.

THE NATIVE COMMUNITY LEGAL EDUCATION CENTRE

This pilot project is funded by the federal Department of Justice through the Access to Legal Information Fund, along with contributions from the Ontario Legal Aid Plan. The objective of the program is to develop tools and materials in Native languages that will assist people in the legal clinic system in northern Ontario with their public legal education efforts. We develop packages of materials which, once piloted and evaluated in a number of communities, can be distributed through a very broad legal clinic system across the north of Ontario. Ontario has a system of legal clinics—now over seventy—across the province that specialize in such areas as poverty law, social assistance, workers' compensation, criminal injuries, and unemployment insurance. Our project has been set up to develop materials that will basically provide people with more information. It looks at how the legal system works right now and its effects on Native people across the north of the province.

The project operates under the auspices of the legal clinic system. We report to an advisory committee that is essentially a board of directors made up of representatives from all legal clinics across the north of the province. Members of this committee, in the course of their regular work in legal service delivery, come into contact with Native people, work in Native communities, and need more appropriate and more culturally sensitive tools and resources for public legal education.

The main thrust of our work is not the content of the law but the skills necessary to identify different kinds of legal problems—family, criminal, or social assistance issues—and available resources. It is not very useful to empower people with too much technical information, but this first step is really, really important: "How do I know that it is a legal problem?"

We have developed a series of interactive case studies that are used in small groups of four or five people. The groups are given a series of different problems, some of which are legal problems and others that aren't. Their task is to identify the legal problem, developing an awareness of which issues are legal concerns that can be resolved by the dominant legal system and which issues can be resolved by informal, traditional means.

Legal clinics are located in all of the communities of the near north. Since the area covered is huge, and the needs and interests of the communities are very disparate, we focus on target groups located in the areas where the legal clinics operate, including Kenora and Sioux Lookout.

One of the biggest and most important tasks for the pilot project in its first year is developing partnerships with regional organizations across the province. This effort has been very difficult because all good community development projects should start from the bottom up, with a group of people identifying a need, then going to a funding agency for money. This project didn't quite happen that way: it happened in reverse. Money arrived, and an organization was created. Then we had to find out if a need existed and if anyone wanted to work with us. This process has been the biggest hurdle we've had in getting programming underway. And the regional Native leadership hasn't clearly accepted that our project should work in this region.

Slowly, we have been developing trust with the Native communities, emphasizing that we have the staff resources to work with and for them to develop programs appropriate to their needs—with the very specific proviso that we're not operating in the area of First Nations law. We have to stick within the legal clinic mandate of poverty law issues. We're not at all experts on such issues as land claims and hunting and trapping.

We have done some work in getting information out to the communities. We have non-controversial public service announcements in Cree that explain what resources are available for different kinds of problems. A television announcement might say, for example, "Have you been charged with an offence? If you have a criminal law problem for more help you can go to …" and then the announcement lists the resources.

We have a very short demonstration of some of the material we're developing. This radio play deals with a small community called Pun Lake.

DEMONSTRATION TAPE: THE LAW/SOCIAL ASSISTANCE

Radio announcement.

Hello, Pun Lake, this is the Law Line. I'm Jeremiah Migowicks. It's been about ten years since I've been heard over the Pun Lake airwaves. The last time I was on this radio station isn't something that I'm proud of. That incident allowed me to pursue a career in law, and that's the very reason why I'm able to host the "Law Line" on Radio PUNY. [Music]

We're back with the "Law Line." If you have a law-related problem or a question, you can call me and I'll attempt to answer your question over the radio so that other people can also benefit from the information. Let's go to the phones now and take our first call. Hello, you've reached the Law Line. This is Jeremiah Migowicks. Can I help you?

***Caller**: Jeremiah, this is John Maladatass. How have you been? It's good to see you back in Pun Lake and on the radio, especially after what you did to the radio station ten years ago.*

***Jeremiah**: Johnny, how are you, you old troublemaker you? It's good to be back in Pun Lake. After that fiasco, I realized that I didn't know much about the law, so I went to law school and studied to become a lawyer. How about you? They sure gave you the perfect last name when they called you "Maladatass." You sure used to get into all kinds of trouble.*

***Johnny**: Thank you, Jeremiah Migowicks. I'm sure Migowicks means "thank you." Maladatass means "troublesome." Look, my UIC claim will be running out soon and I'm not having any luck finding a job. I'm wondering what my options are?*

***Jeremiah**: You can always try social assistance.*

Johnny: *I'm not sure if I would qualify. What do I have to do to get social assistance?*

Jeremiah: *As long as you live on a reserve and you're a person in need, you can apply for social assistance at the band office.*

Johnny: *My friend said that it would have to be determined that I'm employable. I'm not sure what he meant by that.*

Jeremiah: *That means you're not restricted from working by a physical or mental disability.*

Johnny: *That could be a problem. People always say that I'm crazy.*

Jeremiah: *That's not what they mean by physical or mental disability. What they mean is that you don't have a broken leg or a severe mental disability preventing you from working. If you did, you would be unemployable.*

Johnny: *It's really hard to find a job these days. I really would take the first job offered that came along.*

Jeremiah: *What happened to your job here at the radio station?*

Johnny: *After the station blew up ten years ago, we had to start all over again. We built a new structure, ordered new equipment. The whole shaboom. No pun intended. There really wasn't any money left to pay somebody to manage the radio station.*

Jeremiah: *I guess I really blew that one, yeah? No pun intended. That was scary. I didn't know that the construction company was blasting away rock that way for the sewage project.*

Johnny: *That was good timing when you thought you had all the buttons figured out on the radio equipment and you go to push a button. "Boom."*

Jeremiah: *Everyone had me convinced that it was my fault that the station blew up.*

***Johnny**: Yes, but they found some old cables still connected and they think that the blast and the wires burnt the building down. The community never intended to sue you, but you know how things get blown out of proportion.*

***Jeremiah**: I was so scared that I left the community until this thing blew over. No pun intended. While I was out there, I went to the legal clinic to find out what I should do. That's when I realized that my knowledge of the law was limited.*

***Johnny**: I think everybody thought that you knew what really happened. The Band wasn't serious about suing you. You know how they like to joke around. Anyway, speaking of the Band, I better get down to the band office and fill out the forms for social assistance.*

***Jeremiah**: It's been good talking to you again, Mr Maladatass. Stay out of trouble.*

***Johnny**: Okay, Jeremiah Migowicks. Thank you for the information. Talking with you is always a blast. Bye.*

***Jeremiah**: Bye. That's the "Law Line" for this week. This is Jeremiah Migowicks of Pun Lake on Radio PUNY. The radio with a bang.*

There are a number of serious issues surrounding the development of public legal education aimed specifically at Native people. When we talk about public legal education, we're talking about the dominant legal system. In some ways, a script like this may seem to be a good idea. People need to have information about how social assistance works and what happens if their welfare has been cut off. The big danger in this kind of work in the north is that, just when communities are starting to take back control of their justice systems, here we come with information about the non-Native system. With that information, comes a certain value system. As educators, we are concerned that we should be empowering Native people rather than further eroding their institutional development.

Comment **Member of Audience.** I am involved in working for a legal education society. We go out to the remote areas to tell the young people about their options. We teach the dominant justice system. This is the one that I know. I'm not saying that this is the best justice system. We show children that there are job openings in corrections, the sheriff's department, and probation. They are encouraged to apply for these jobs.

Question **Sharry Aiken.** Do the people in your community ever express concern that the information isn't wanted or needed?

Response **Member of Audience.** I only go where I'm invited. I talk to everybody who will listen: grade twelve law students down to grade one as well as adults and different community groups. I also have elders explain how traditionally things would have been done.

Comment **Member of Audience, Arctic Public Legal Education.** Our program covers the top third of Canada. We have a large land area and hundreds of linguistic groups. We haven't encountered problems with our materials: we try as much as possible to have them translated into French and English. Usually, they are produced in English and one of the Dene languages, depending on which group the materials are for. We are also issue-oriented and have produced materials on domestic or family violence. We also make ourselves available to coordinate workshops on family violence or child sexual abuse. We have a program coordinator who will go to the community, at the invitation of the community, to organize a workshop. This allows us an inroad into the community. Many communities have courtworkers who act as intermediaries or liaisons with the community. They assist us in organizing the program. But we haven't experienced questioning of the materials we have been delivering to the communities.

Comment **Sharry Aiken.** The question is a philosophical one. You mentioned doing work on family violence at the invitation of communities. But the issue arises when you look at the available legal remedies if you are the victim of violence at home. As educators, we start pushing the dominant system when we say, "Well, you know, somebody can be charged with an offence. You can get a peace bond. You can get a restraining order. Blah, blah, blah." So, when you get into a discussion of remedies, you get into a whole value system around using the legal system for protection and as a remedy.

Response **Member of Audience, Arctic Public Legal Education.** What we are doing is providing information for people. They make their own choices about how they may use it. But that's only one small part of what we provide. Our workshops, for example, are geared toward creating an understanding of the phenomenon of family violence or child sexual abuse rather than, "Well, this is what's going to happen if you commit the offence. These are your remedies and this is how you can get a lawyer." It's more basic than that. It is not remedy-oriented.

Comment **Douglas Miller, Executive Director, Legal Services Board, Northwest Territories.** The majority of our programming is Native in that we operate in Native communities. The Legal Services Board of the Northwest Territories delivers legal aid, courtworker, and public legal education services. We have three legal services centres that provide legal aid and education programs. Community-based boards called Regional Legal Services Committees also operate, but, unfortunately, they are not involved in setting priorities.

The Legal Services Board plays a coordinating rather than a direct information dissemination role. We've got pamphlets and videos. We've done mock trials and developed a law line. Because we want to help people in the community take responsibility for offering programs, we provide money to get the thing going, and then hand it over to the community group. Our Board of Directors has four aboriginal board members; we rely on them for input to help identify program areas. Every year we go through a very intensive planning process about how we are going to spend our funds. We play a coordinating role rather than actually delivering the service. We go to communities at their invitation, and say, "Yes, we can help you with this." In the community legal aid clinics, even though the membership is 100 per cent aboriginal, we're still at the stage where they're seeking assistance from us rather than taking full responsibility for how the clinic develops.

Comment **Member of Audience.** Is it always intrusive if you are encouraging people to resort to conventional and existing legal facilities? What about a case where a person obtains access to counsel for a motor vehicle accident? My position is that, where an existing legal system is available, I don't see an ethical compromise in encouraging people to pursue those rights. I don't see why they should feel uncomfortable about that action.

Response **Sharry Aiken.** People should be encouraged to seek appropriate remedies. However, when you only tell them about half the appropriate remedies—the remedies coming from the dominant legal system—rather than those available in their own community, you're only telling half the story. That is where the dilemma arises. We think about this problem all the time. And, it is important to feel uncomfortable, because that keeps us on our toes. We don't want to be going in with a message that tells people the traditional way of working out problems is wrong. At the same time, some very practical problems can't be resolved by the traditional system and people need to have information. So, that is what we are trying to do.

A justice network has formed amongst people working in public legal education across the country. We have asked for more funding for Native organizations to do research on existing traditional systems because the collective knowledge in this area is very spotty—strong in some parts of the country and weak in others. Some regions right now have very strong traditional justice systems and others have nothing at all—their systems have been completely eroded.

From my personal perspective, I would argue that a project like ours has no business undertaking research. That requires very specialized expertise: people from those regions with an appropriate background to do long-term studies. This research is very important work. Without information, it's very hard for us to move beyond providing information about such issues as welfare eligibility and appeals. We are not going to present general workshops on the Euro-Canadian legal system because, just now, we can't present the other half of the story.

13

THE CHANGING ROLE OF NATIVE COURTWORKERS

RESOURCE PERSONS

Don Avison, General Counsel/Director, Department of Justice, Yellowknife, Northwest Territories

Alice Mackenzie, Mackenzie Courtworker Services, Yellowknife, Northwest Territories

Helen Navalik Tolonganak, Courtworker Supervisor, Courtworker Program, Kitikimeot Regional Council, Cambridge Bay, Northwest Territories

This workshop explores the various roles of courtworkers in remote northern communities.

INTRODUCTORY REMARKS

Helen Tolonganak

Five courtworkers operate in the region where I work. I work full time and the others work part time. I live in a community of about 1,200 people. We have a territorial court circuit every six weeks. We do not yet have a resident lawyer and are just setting up a legal services centre. By fall 1991, we hope to have everything set up to open and operate the centre. Right now, we have lawyers who travel to the community on circuit from Yellowknife, different lawyers every month.

Alice Mackenzie

We are the only organization of strictly courtworkers. The Mackenzie courtworkers cover mainly the western Arctic. All of our courtworkers go on circuit. They are hired for a certain region such as Yellowknife. They go into the different communities where the courts are located, or may just drive to the community and attend court. Our courtworkers also do name changes, customary adoptions, probations orders, and detention orders.

The majority of our people have worked in the organization an average of three years, which is a fairly long time. There is good talent within our organization, but one thing that has been missing in the past has been consistency and communication. Other agencies don't really know much about us, which is a shame. That area we have to work on—making sure the legal community and other agencies are more aware of what we do. Courtworkers often interpret between clients and lawyers. People who do not speak English or who speak limited English feel more comfortable in their own language.

Until now, courtworkers have not had a good support system. While lawyers have other lawyers they can ask for advice, suggestions, and turn to, courtworkers are hired, sent to small communities, and then often abandoned. That's what we are trying to change and this means spending more money. Our funding just now covers mainly travel and wages, with the remainder for training.

I'm on twenty-four-hour call. If courtworkers want to reach me, they have my office and my home telephone number. They can call me any time or they can call another courtworker. This practice means additional expense, but the courtworkers need a support system. They need to be able to rely on others in the organization for support. Nobody understands like another courtworker: what it's like to be the only one in the community that others depend on for knowledge and assistance in legal matters. A community courtworker is an entity unto his or her own.

Don Avison

The funding agreements for courtworker programs generally state that the staff help explain the justice system to accused persons. But perhaps an equally important role courtworkers play is making communities meaningful to the courts, to help courts—judges, prosecutors, defence lawyers, and others—better appreciate what communities are all about. That's particularly important in a jurisdiction such as the Northwest Territories where most justice services are delivered from outside. It's true in the Yukon as well. A person may be in the Northwest Territories for three years and only just begin to understand some of the communities.

Comment **Member of Audience.** The problem I find with courtworkers is that helping people understand what they're facing is only one function and may only amount to helping them understand that they are still going to jail. I always wonder what good we are doing in that type of situation. A major problem is in making statements, particularly if accused persons understand the statements that are written up. I take a look at the statement, and start asking questions in Cree. Often someone else has written up their statement. I'll ask them, "What does this word mean?" The other thing that bothers me is how statements are made. Accused persons often don't understand what they are signing. If I mention that they can have somebody present before they make a statement, is that such a major burden on the Crown or the RCMP? Somebody should be present to help them truly understand what they have agreed to, what they have done wrong. Many people make statements and have not understood their statements.

Question **Don Avison.** In the Northwest Territories, what role do the courtworkers play in addition to giving support to accused persons? Do they play any role in the actual case trial?

Response **Douglas Miller.** In the Northwest Territories, under the guidelines for legal aid coverage, courtworkers provide legal aid assistance on summary matters for eligible persons.

There should be some distinguishing characteristics between the courtworker paralegals who work for the clinic and Mackenzie Courtworker Services in terms of their roles. The legal aid cost-sharing agreement and the agreement that the courtworker has with the federal government provide some guidelines. Under the legal aid cost-sharing agreement, which funds the clinic, the courtworkers are seen more in a paralegal role. They, in a sense, operate as the right or left arm of the lawyers. They are under the direction of the lawyer for the services they provide. This practice makes it easier, perhaps, to train and supervise their involvement in trials. Under the courtworker cost-sharing agreement, the role is primarily defined as liaison: they do provide legal assistance in speaking to the sentence in court. But they don't have a supervisor or a legal director to ensure that they are actually in a position to do the trial. That is an inhibiting characteristic of the cost-sharing agreement.

Over the last few years, we have been trying to bring the courtworker cost-sharing agreement under the umbrella of the legal aid agreement. This change would allow courtworkers not only to do trials in justice of the peace courts, for example, but also to provide a myriad of civil services. They provide many additional services already but they are not technically or legally cost-shared. That is how the scheme is working. In the long term, courtworkers are going to need that legal component and direction in order to conduct trials. In the case of Mackenzie courtworkers, they don't have that role now.

Question **Don Avison.** How much supervision of courtworkers is required? Is it true that individuals who are working as courtworkers need a significant hands-on supervisory relationship with lawyers? Or is it possible to develop the kind of expertise necessary to allow courtworkers to carry out that kind of function? What concerns me are those situations where no mechanism allows courtworkers to do trials. Then you are putting people in the justice of the peace courts who won't have the opportunity to obtain representation.

Response **Douglas Miller**. In many ways, we have become too legalistic in society. We will do trials for people who are not eligible for legal aid, or who are going to the justice of the peace court. I am not suggesting that, in every case, a lawyer must supervise the courtworkers. But legal issues do arise. And there has to be a referral mechanism so courtworkers can get assistance when required.

Comment **John Fowler, Judge, Yukon Territory**. You really hit the nail on the head. What training did I get as a judge? One day I was a lawyer and the next day I was a judge. What training did you or I get to go to court? One day, you are in law school, the next day you are in court. You learn by doing, and you learn by liking what you do. There is such an emphasis on training, yet many training manuals are enough to destroy anyone's initiative.

We have such a concern about liabilities and technicalities. I have seen organizations and groups just devastated when they are confronted with all of the terrible problems that can happen. Let the common law develop. If someone makes a mistake in court, be it the courtworker, the police prosecutor, the justice of the peace, or the judge, we have an appeal system to correct mistakes. I have seen the Crown appeal defence cases because they knew a mistake was made. That's the beauty of the system. My goodness, as someone said this morning, "Let's let go." Let the justices of the peace, as poorly trained as they may be, and the courtworkers, without the supervision they may like to have, get out of that mentality. Get them into a "can-do" mentality. And then start correcting the problems. Worrying about all these problems brings us to paralysis.

Comment **Agnes Krantz**. I have been put in a situation of not knowing anyone in the Northwest Territories and being put in Rankin Inlet. I suffered from professional isolation. I had no one to talk to. I had twenty years' experience and I have practised law. But there were times when I really wanted to talk to somebody. Ours is a very verbal profession, and that's often how we deal with the problems that arise. We talk to people. What I would want for my courtworkers is not to be there looking over their shoulders but to be there so that they can talk without fear and embarrassment. If I feel professionally isolated where I am and with my experience, I am concerned about those courtworkers with less experience.

Comment **Don Avison**. I don't dispute for a moment that training is required for courtworkers. But I don't think that pouring lawyers in to address the problems is the answer. Maybe there is a real need to change what the territorial court looks like. We shouldn't try to recreate the justice of the peace court in the image of the territorial court. We should give the accused the best service we can. My question is whether the adversarial system we have in territorial court, is the best or the only way to deal with cases in the justice of the peace court which have been around for a long time and haven't always been as formalized as they seem to be at the present time.

Response **Douglas Miller**. If there is some way around the adversarial system, then you don't have to put resources into sophisticated training about rules of evidence and hearsay rules. It would be a lot easier and the system would be better served. Certainly, from our perspective, the more trials that could be done in justice of the peace court by courtworkers, the better. This would take pressure off the legal aid system. And that would be welcomed.

It would be neat to see what sort of system could be devised to accomplish the same ends as the so-called adversarial system. This system would allow us more opportunities, as part of the territorial, provincial, or superior courts, to have more time to deal with the needs and interests of victims and witnesses. I am sure this is also true in other parts of the country. We are going from case to case to case to case—with little opportunity and time to provide a service. If there was a mechanism that would make the justice system work better with modest offences, it would also help improve the services available to deal with more serious offences. I think we should be exploring this option quite seriously.

Comment **Member of Audience**. It is really good to discuss the development of community-based justice systems such as the justice of the peace system. But, in effect, all this court does is provide assistance to the existing system —although, to some extent, this is done by people in the community. It is not, in my view, truly a community-based system. It is only labelled that because it involves people in the community. The justice of the peace court is adapted to whatever the community thinks is appropriate in the circumstance. Some advocacy is involved in determining if the person committed the crime and what the penalty for this offence should be.

Comment **Don Avison**. The real issue we have to confront is self-sufficiency. A conflict may arise between the preservation of the rights of the individual and the rights of the community and the victim. The *Charter of Rights and Freedoms* is specifically oriented towards the protection of individual rights while not placing the same emphasis, perhaps, on the protection of the community. In many of the communities in the Northwest Territories, community meetings are held when the circuit court arrives. This practice is very helpful because court personnel gain some idea of what the community members think when we are there. It is also always difficult: people in the communities often want to talk about the specific cases the court must deal with rather than general issues.

Judge Brown has been involved in such meetings in the Baffin region. The court has participated in hands-on training sessions with justices of the peace, the Crown counsel, and others including courtworkers. This initiative is part of increasing community access, service, and responsiveness.

14

THE ROLE OF THE PROVINCE IN THE ESTABLISHMENT OF A TRIBAL COURT

RESOURCE PERSONS

George Crow, Chief, Whitefish Bay First Nation, Thunder Bay, Ontario

Lynn Roundpoint, Chief, Mohawk Council of Akwesasne

Mark Stevenson, Legal Advisor, Ontario Native Affairs Secretariat, Toronto, Ontario

This workshop examines the issues surrounding the development of tribal courts in Ontario, including the constitutional limitations of the federal and provincial governments, the jurisdiction of tribal courts, and the legislation implications of creating aboriginal courts.

INTRODUCTORY REMARKS

Mark Stevenson

The province of Ontario has funded a number of justice models. One model is a sentencing panel in Sandy Lake where the elders advise the court on sentencing. We have also have funded and established an elders diversion program in a northern community in Ontario. A third initiative, in Toronto, is called Aboriginal Legal Services. This program involves court workers who have a legal aid clinic and, now, an adult diversion program where the Crown counsel can work out a deal with Aboriginal Legal Services so that charges don't go ahead. Under the diversion scheme, the elders determine what punishment should be imposed and how the charges should be dealt with.

These and other initiatives are being undertaken within the existing legislative system without any amendments to the *Criminal Code*, the *Courts of Justice Act*, or any other provincial or federal legislation. They are implemented on the basis of informal bilateral arrangements between the local Crown counsel and the Indian communities.

Two communities in Ontario are doing "cutting edge" work in this area of the justice system. The community of Akwesasne is developing a set of substantive laws for the community that would replace criminal law. The next step would be to consider developing a court system.

The second community is Whitefish Bay. In their self-government negotiations with the provincial and federal governments, community members are discussing the creation of a tribal court. This initiative would, of course, require a legislative base. If the federal and provincial governments have the political will and the commitment to follow through with the negotiations, we will end with something very substantial for Canada. The initiative would take us in the direction of the United States, where reserve-based Native groups have autonomous court systems.

CURRENT DEVELOPMENTS IN AKWESASNE

Lynn Roundpoint

The community of Akwesasne is located on the Canada-US border; it's also on the borders of Ontario, Quebec, and New York State. We are subject to six different laws: the Ontario provincial law, the Quebec provincial law, the federal law of Canada, New York State law, United States federal law, and the Great Law of Peace of the Mohawks.

Because of the complexity of laws and jurisdictions, many people say we should govern our own people; we should also be able to try our own people. In 1985, a group of community volunteers decided that Akwesasne should have its own code of offence and court procedures. They began to put this code together and it's now in its tenth draft. It will shortly be presented to the justice departments of Ontario, Quebec, and the federal government of Canada. Representatives from the United States and the Mohawk communities will also participate in discussions. The community is essentially working toward what will be the first Native justice system in Ontario.

The proposal states that this code will replace the provincial laws, the state law, and the federal law that right now have hold on us. This code will be our law for the community. It will be our law for our courts. A court system is in place, but it is not currently functioning due to the 1990 Oka crisis. This set back many different things. Akwesasne, a community that had a gambling controversy, is now split: half the community supports the creation of a justice system and the other half says, "We don't need justice. We will govern ourselves. We have sovereignty." Before we can go ahead with the justice system, the community has to come together with one mind and accept the system themselves.

Under the proposed code, different sections relate to different offences. It is like a criminal code, except it is the code for the Mohawk people of Akwesasne. The court is comprised of three justice chiefs who determine the sentences. There is also an appeal board of grand justice chiefs. They would be appointed by the Mohawk Nation Council of Chiefs and would be people who are respected in the community and who have not caused any harm. The accused person has the opportunity to go in front of the justice chiefs. If the accused person has a lawyer, the lawyer would explain to the justice chiefs why the offence was committed. There would not be a trial.

We also have our own Native police force in our community. Right now, the police force is accountable to the police commission, which in turn is accountable to the Mohawk Council. When the code goes into effect, the police will be charged with enforcing it. The Mohawk police within the territory of Akwesasne actually have three appointments: as Akwesasne Mohawk police officers appointed by the grand chief and as Ontario and

Quebec police officers. But first and foremost, they are Akwesasne Mohawk police officers, not Ontario or Quebec police officers.

Many policing problems are the result of jurisdictional boundaries and firearms. Currently, police cannot go on-call to Cornwall Island, where their station is, without getting an escort from the New York State police. Since the Mohawk police carry side arms, if they go across that border, they can be arrested. We are running into major problems with that. When offenders commit offences in St Regis, and they need to be escorted back to the station, we're extraditing them. We have no way to get them to the village of St Regis other than by going through the United States.

CURRENT DEVELOPMENTS IN WHITEFISH BAY FIRST NATION

George Crow

Our community is currently involved in a framework agreement on self-government, with approximately twenty-four issues on the table for discussion. One issue is justice. In June 1989, we sent a proposal to the government of Ontario on justice, and didn't receive any response to it. So we resubmitted the proposal in fall 1989. The response we got was that they needed a more detailed proposal. We said, "No, we will leave the proposal as it was presented." Nothing happened for a whole year.

Then a new government came in with a commitment to have discussions with the communities on self-government. So we took them up on that, resubmitted the proposal, and they said they would deal with it. It wasn't until after the Attorney General talked to some people in Ontario that we started getting responses. The situation right now is that they have our initial proposal.

We have prepared a discussion paper for the Ministry of Attorney General that outlines the types of required legislative change for a community that wants to set up an aboriginal court or a tribal court within the existing constitutional framework. We chose a specific model that calls for elected judges as opposed to appointed judges. The proposed court would have jurisdiction over summary offence convictions, provincial offences, bail and other matters dealt with by a justice of the peace, some civil and family matters, and some offences usually dealt with by a provincial court judge.

We also identified areas that we would not want this court to deal with, including serious offences such as murder, attempted murder, aggravated assault, kidnapping, forcible confinement, and hostage-taking.

We have examined changes to existing provincial and federal legislation that might be required if a tribal court was to be established. The first area we considered was the appointment of judges. In Ontario, as in most provinces, provincial court judges are appointed by the Lieutenant Governor under the *Courts of Justice Act*. They must meet certain qualifications and, if individuals are going to be elected with different qualifications, the *Courts of Justice Act* would have to be amended. For example, changes might be made to the requirement of having ten years in the legal profession and the practice of appointing or electing court members.

A key difference would be that a provincial court judge *per se* is tied into all other aspects of the *Courts of Justice Act*, including removal procedures and salaries. On the other hand, if the judge has the authority to act pursuant to independent legislation such as the Akwesasne First Nation's legislation, then he or she is not tied to all of the requirements stipulated in the *Courts of Justice Act*. In preparing the discussion paper, we considered the issue of a First Nation electing judges, because several communities advised us in informal discussions that this action is one they would want to take. It may be necessary to modify Section 2 of the Canadian *Criminal Code* to accommodate a First Nations' judge acting as a provincial court judge.

Judges in Canada, unlike the United States, are not elected, but some attractive reasons can be found for considering the election of judges. First, elections provide a significant empowering mechanism for the community. Second, because the community gives the judge and court a mandate for action, this process increases a judge's sense of accountability. Third, elections could assist in maintaining the independence of the court by balancing different aspects of the community's requirements. For example, in a court structure with three judges, one could be elected by the band council, a second by the community, and the third by the elders. Such an arrangement might provide the balance required in any court.

The provinces will also have to consider costs such as the salaries for judges. If First Nations judges are going to be considered as regular provincial court judges, paying salaries could impose a significant hardship on a small community of 300 or 400 people.

Another more difficult issue is the different types of jurisdiction. Will the First Nations judge have jurisdiction specifically over the reserve community or will the jurisdiction be much broader? There are ways of defining jurisdiction. You can gain provincial division jurisdiction through amendments to the *Courts of Justice Act* or a judge's authority can be specifically defined, limiting the court to dealing with criminal matters on the reserve. Amendments can also be made to the *Game and Fish Act* and different provincial offence acts to gain jurisdiction broader than the criminal area. In Ontario, the *Arbitration Act* relates to civil matters and the reserve-based court could be given jurisdiction by consent requirements. There are also arbitration mechanisms under the *Children's Law Reform Act* and the *Family Law Reform Act*. If you use the consent requirement, you can have much more flexibility in jurisdiction.

One issue that we examined in preparing the discussion paper was whether the First Nations judge should have powers similar to those of Ontario provincial court judges or should they simply be justices of the peace, who already have broad jurisdiction. Although the communities express some reluctance in considering a justice of the peace program, such a program can in fact be involved in fairly significant matters: offences under the *Provincial Offences Act* (including game and fish issues), preliminary inquiries over indictable offences under the Canadian *Criminal Code*, and, if the Crown elects, some indictable offences. Courts can be structured so that the justice of the peace is elected, with the Attorney General making the appointment after the election. In this case, the community controls who is selected to serve as a justice of the peace.

These initiatives would require fairly modest amendments to the legislation relating to the appointment and powers of justices of the peace. However, these judges will still be applying the same laws as regular Ontario provincial court judges. In a number of communities, this is a sore point. Even though the judges may be elected or appointed by the community, the laws they will deal with are the same laws as before. For this reason, some communities are trying to establish their own comprehensive criminal code.

Changes can also be made to make the procedures of the court more "user-friendly." Another issue is the *Charter of Rights and Freedoms*. If alterations are made to the *Courts of Justice Act*, various sections of the Canadian *Criminal Code*, and criminal procedure, then there will be problems under the *Charter of Rights and Freedoms*. Individual rights are amongst the first issues generally raised when aboriginal courts are discussed. Provisions must be made to ensure that the *Charter of Rights and Freedoms* is applied. There is still much work to be done, as, in Canada, we are at the very early stages of thinking about tribal courts.

Comment **Member of Audience**. I do not think that there is any attorney general in Canada who would renounce his or her right to lay charges in criminal cases. Nor is there any attorney general who will accept the full sovereignty of a Native tribe or group. The proposed Akwesasne code is very interesting because there are real problems of jurisdiction. There would have to be a treaty under which the Attorney General would give up his right to lay charges. On the other hand, a considerable amount of power could be given to the local authorities. Our system is very flexible and allows for alterations without any major amendments to the law.

Comment **Member of Audience**. One thing that has always bothered me—even if we are using the existing system—is the inability or refusal of judges to recognize Indian common law. It makes absolutely no sense to me for Canadian courts operating in northern Ontario to look to precedent that was set back in Essex County, England, saying, "That's the common law; therefore, that's the way it's got to be." We have this very, very unique rich North American common law—the Indian common law—that is available. There is no reason a judge can't refer to the traditional law when rendering decisions. They already do that in a very, very small way in family law. This practice makes more sense than looking to England as a source of our common law.

The second issue relates to the constitutional issue if no attorney general were prepared to set aside the authority to lay charges in criminal cases. The real issue is whether an attorney general supports the notion of an inherent right to self-government and aboriginal sovereignty. My understanding is that at least one attorney general has said clearly that he and others are willing to talk about how to make aboriginal sovereignty a reality.

Response **Mark Stevenson**. One critical question is: "Where do we start?" We are addressing the province's role in establishing a tribal court. The province has responsibility within the provisions of the *Constitution Act* to deal with the administration of justice but not the *Criminal Code* which is a federal responsibility.

Comment **Member of Audience**. If we rely on the judge's common sense in making decisions, it will be like wine: it'll be a good or bad year for judges. When I was in law school, I remember some of my criminal law teachers comparing criminal law amongst the provinces. In which provinces in Canada was sentencing more backward than others? Or which province was more advanced in the way judges looked at a cases? We have to remember that the *Charter of Rights* is designed to protect the individual, but the *Criminal Code* protects society.

A major issue is when does the *Criminal Code* apply to society, an individual, a particular reserve, or a particular Native group. We don't have the same criminal code in Canada as in the United States. Each different province, each different judge in each province, makes decisions differently. When I was in law school, I was told that the reason was that judges are products of their own society in criminal matters. So why should the law be different when we are talking about Natives? We have the non-Native and the Native, but even Natives have different traditions amongst different communities. So, it should be the same point of view. The system of justice should come from within the society. It is not for us to say what would be the best for that society.

Response **Mark Stevenson.** I don't think that anyone would dispute the right of Native people to exercise sovereignty in the justice area. That goal is what most communities are working toward. But what is really needed is a constitutional amendment. Things can be done if particular communities want to do them. Perhaps one should adopt the view that there is inherent aboriginal sovereignty, sovereignty that was never extinguished. Maybe that's the answer: there is no clear and plain language extinguishing inherent sovereignty. So, there remains inherent sovereignty over the justice area. And now, go out and do it. Maybe that is the answer. I think I agree with you that the existing system, even though you can tinker with it—is still very constrained.

Comment **George Crow.** One thing you have to keep in mind is that two parallel activities are in operation. The larger political activity of aboriginal sovereignty and inherent jurisdiction has been on going for at least twenty years, and will probably continue for much longer. Then there is the smaller issue, which is what we are dealing with at Whitefish Bay. Simply put: until the larger issue is resolved, it is better to control our affairs at home than to have somebody from outside control them. Developing a justice system and creating courts gives the local judicial system and the local community a chance to begin to create reserve-based structures. Pending a larger political solution, this local alternative is better than the status quo.

15

UNLOCKING ABORIGINAL JUSTICE: ALTERNATIVE DISPUTE RESOLUTION FOR THE GITKSAN AND WET'SUWET'EN PEOPLE

RESOURCE ORGANIZATIONS

Gitksan-Wet'suwet'en Education Society, PO Box 335, Hazelton, British Columbia VOJ 1Y0

Smithers Indian Friendship Centre, PO Box 2920, Smithers, British Columbia V0J 2N0

Upper Skeena Counselling and Legal Assistance Society, PO Box 130, Hazelton, British Columbia V0J 1Y0

This proposal dated 20 March 1989 was prepared for the BC Ministry of Attorney General.

SUMMARY

The justice system brought to Canada by the Europeans has been very destructive of both the individual and community life of its aboriginal people. We propose to implement an alternative in northwestern BC that will allow the dispute resolution laws and methods of the Gitksan and

Wet'suwet'en people to interact with the provincial justice system in a way that does not undermine the integrity of either. Our proposal concentrates on the training and education of people from both the Gitksan and Wet'suwet'en communities and the social and justice agencies. The Unlocking Aboriginal Justice Project will take three years to complete for a total cost of just over $2 million. Once in place, the program will need no ongoing bureaucratic structure or ongoing project costs. With advice from the existing agencies, the people will run the program themselves.

We see two causes for the large numbers of Native people in the courts and jails. One, prejudice and culturally dysfunctional methods affect Native people more often than others. Second, crime rates in Native communities are high. Behind both of these factors is the social and cultural dislocation or anomie felt by aboriginal people under state administration. The Gitksan and Wet'suwet'en deal with antisocial behaviour differently from the individualized, adversarial methods of the western system which uses punishment as its main sanction. They rely on social censure within the kinship network as a sanction and pay much attention to compensation by the offender's extended family or House group. We see the key to principled interaction between the two systems as the ongoing translation of concepts and case histories from one culture to our proposed education and training program.

Western justice is not merely futile but actually undermines the current efforts of Gitksan and Wet'suwet'en to deal with their problems themselves. We consider it crucial that aboriginal justice be administered within aboriginal structures. This proposal therefore rejects concepts such as parallel justice systems which would put Native people in police, judge, and jailer roles in their communities. The ultimate responsibility for justice rests with the hereditary system not with social service or justice bureaucrats. At this stage, we are considering diversion, sentencing, parole advisors, and alternative dispute resolution as the initial areas of interaction.

INTRODUCTION

The imposition of European ideas of justice on the Native people of Canada has been profound, pervasive, and extremely destructive of both individual and community lives. Until very recently the resulting misery has largely been suppressed from public and official consciousness. This is now changing. In British Columbia and across Canada a number of recent reports and inquiries have chronicled the wide gap between indigenous and European views of what is just. Some of these investigations arise out of particular issues, such as the Marshall inquiry in Nova Scotia, the task force on policing and race relations in Ontario, and the aboriginal justice inquiry in Manitoba. Others come from more general mandates such as those of the Canadian Bar Association Committee on Imprisonment and Release and the BC Justice Reform Committee. But they all have heard how both western and indigenous justice become tragically distorted when one system begins to dominate the other.

The extent to which justice has become perverted into injustice is revealed by some brutal and unequivocal statistics. In the Pacific region of Canada, Native people make up less than five per cent of the general population but twelve per cent of the federal penitentiary population. In the BC provincial correctional system, sixteen per cent of admissions are Indian people. These high rates of incarceration are linked to high rates of violent death (thirty-three per cent of deaths of so-called Status Indians compared with five per cent for non-Indian Canadians). The most alarming statistics are those describing the growing rate of suicide among young Native people. To these dramatic numbers can be added the even larger mass of lesser criminal, family, and civil matters that together make up the daily workload of the groups submitting this proposal. It is our view and experience that the BC and Canadian justice systems are not working for Native people in general and, in particular, not for the Gitksan and Wet'suwet'en people of the Upper Skeena region of northwestern BC.

It is difficult to explain the complexities of how and why Canadian justice has failed Native people. One approach might see two causes for the high proportion of Native people in BC courts and jails. First, racial prejudice and culturally dysfunctional methods at all levels of the justice system cause Natives to be apprehended, charged, convicted, and incarcerated more often than whites in equivalent circumstances. Second, crime rates higher than those of the general population are a reality in many Native communities today. At the root of both these factors in the social dislocation experienced by aboriginal people under western state administration. Nevertheless, the perhaps artificial division of these causes does suggest that repairing the failure must pay as much attention to the workings of the community as the workings of the justice system.

While each aboriginal people has its own experience of the Canadian justice system, central to any solution is the need to overcome stereotypes and to acknowledge there are ways of administering justice that may differ from the individualized, adversarial approach familiar to most Canadians. This new understanding requires the ongoing translation of concepts and history from one culture to another. We attempt to begin this translation in the first part of this proposal.

We understand that the Ministry of Attorney General is committed to taking new initiatives to develop with Native people more effective justice systems for their communities. Our collective skills and knowledge of both the provincial and indigenous justice systems put us in perhaps a unique position in BC to very quickly design and implement a practical model for alternative justice delivery. We feel such a model could be modified to apply to most Native societies in the province and, at its basic level, to many non-Native rural communities. The model we outline in the second part of the proposal allows for the existing world view, laws, and kinship structure of the Gitksan and Wet'suwet'en to be integrated with the provincial legal system using a process of cultural translation. In particular, the proposal focuses on those areas of interaction between the two systems where we feel the most friction occurs and where a significant amount of court, probation, prison, and parole time can be saved. The proposal has research, training, communication, and delivery components, all of which draw on programs, data, and experience already in place among the groups. To further expedite the proposal, we are suggesting initiatives that do not require changes in existing provincial or federal legislation.

The Gitksan and Wet'suwet'en are two socially integrated peoples who live in the Upper Skeena region of northwestern BC. The Gitksan, with a population of about 5,000, are historically related to the Nisga'a and Tsimpsian people to the west and are considered to be part of the Northwest Coast culture. The 2,000 Wet'suwet'en are Athabaskans, a cultural and linguistic family of peoples that occupies much of boreal North America. The formal, structured Gitksan society contrasts with the more egalitarian and spirit-conscious Wet'suwet'en, yet for some thousands of years the two peoples have influenced and borrowed from one another to create a shared society without submerging the distinctiveness of either people. In recent years, they have jointly created and managed a number of agencies to administer services and assist their interaction with the federal and provincial governments. Three of those agencies combined their knowledge and experience to present this proposal.

The Upper Skeena Counselling and Legal Assistance Society (USCLAS) maintains an office in Hazelton which is the primary legal services and information centre for the Gitksan villages of Kitwancool, Gitwangak, Gitseguecla, Gitanmaax, Glen Vowell, and Kispiox, and Wet'suwet'en villages of Hagwilget and Moricetown, and the non-Native Hazelton and Kitwanga communities. It was established in 1975 and presently has a staff lawyer, two legal information counsellors, and a legal secretary. All staff are Gitksan and two of them speak the language fluently. The society's caseload is equally divided among criminal, family, and civil cases. Over ninety per cent of its clients are Gitksan or Wet'suwet'en. (See Appendix A.)

A major program of Smithers Indian Friendship Centre is legal services. The two legal information counsellors share offices in the Centre with a Native courtworker who is funded through the BC Native Courtworkers Association. The Centre has had a legal information counsellor since 1976 but has seen its caseload double each year since 1984, when the Smithers Community Law Office was closed because of government restraint measures. Smithers is the area's main commercial and administrative centre and the counsellors serve both its Native and non-Native population in about equal proportions. The Centre and USCLAS draw clients from the same Native villages because, in many cases, both parties to a dispute need representation. The Friendship Centre runs a drug and alcohol counselling service, and an assistance program for the victims of sexual abuse and wife battering, as well as craft, recreational, and drop-in services for local and visiting Native people. (See Appendix B.)

The Gitksan-Wet'suwet'en Education Society was formed in 1982 to provide teacher training for Gitksan and Wet'suwet'en students in their local area. Since then, it has designed and organized training and education courses in fisheries, forestry, court translation, computer, and office skills as well as providing direct services such as child welfare and youth programs. The Society has an extensive library specializing in written and oral records of Gitksan and Wet'suwet'en history. These include genealogical charts of each Gitksan and Wet'suwet'en House or kinship unit, the peoples' laws as recorded in the formal oral histories, songs, crest poles, and ceremonial blankets, and the case histories recounted by chiefs and elders from their life experiences. (See Appendix C.)

As has already been indicated, the remainder of this proposal is divided into two parts. The first establishes a conceptual framework in which the European-derived justice system of the province and the indigenous justice system of the Gitksan and Wet'suwet'en can be usefully placed. We feel it is important that Ministry officials have a clear understanding of the cultural and historical underpinnings of this proposal so they can properly evaluate the proposal and any programs that flow from it. The second part of the proposal details the elements of the program along with a management plan and budget.

But first we use an analogy to try to convey how historical events have led to the circumstances in which Gitksan and Wet'suwet'en people find themselves today.

CULTURAL TRANSLATION

European Contact—An Analogy

A man falls into a freezing river. The water is not deep and he begins to half-swim and half-wade to the shore. But very soon the blood vessels in his arms and legs begin to constrict, depriving the muscles of oxygen and slowing movements already hampered by waterlogged clothing. The man reaches the shore alive but very cold and in a state of shock. By now the blood vessels in most of his body have contracted to a point where they are barely keeping the tissue alive. This enables the body's remaining resources to be directed at keeping a minimum flow of blood to the brain, heart, and kidneys—organs vital to maintaining the body's homeostatic balance. If the balance is lost, death soon follows. In this state, signs of life are barely discernable; the man is in a coma.

A hundred years ago, the coming of the Europeans to the Upper Skeena immersed the body of the Gitksan and Wet'suwet'en society into an icy flood of virulent disease, racism, cultural expansionism, and superior military technology. After first trying to resist the flow and then trying to swim with it, the society began to go into shock. The chiefs at the time faced a choice. Either they could attempt to continue to struggle and face certain political, if not physical, annihilation. Or they could move to conserve the vital elements of their society. Whether a decision was made consciously or not, the history of the next century indicates the choice was for conservation. During that time, the collective knowledge of laws, histories, and territorial boundaries, the payments at the feast, and the succession of chief and other names were kept flowing. At the same time, land management and economic activity in the territories declined, village life was forced into government-imposed patterns, languages and spiritual practices went underground, and the proud display of crests on poles and regalia tended to become consumer art. To the casual observer, the society must have appeared moribund.

The comatose man on the river bank is found by his companions, nephews perhaps. Although the cold body can keep its vital organs ticking over for some hours, eventually the peripheral tissue starts to die, the contraction of the blood vessels relaxes and the vital organs thus lose their supply of oxygen. The rescuers have experienced such emergencies and know that the primary cause of the coma must be corrected: the body must be warmed. This will be done gradually. Rapid reheating will irritate the heart muscle, causing it to pump erratically and malfunction. As they dry the body, massage the limbs, and place the man by the fire they have built, his heart rate increases and his blood pressure begins to return to normal. A while later, the kidneys resume functioning and, as blood circulation continues to improve, the man starts to revive.

In the early 1970s, the nephews of the chiefs who first braced themselves against the Europeans examined, as it were, the comatose but living body of their society. They saw that at the extremities it was beginning to die. The natural tissue of the land and rivers was being destroyed by industrial resource use and the social tissue of the people was being destroyed by cultural anomie. Clearly, resuscitation had to begin soon or the society as a whole would die. While attempting to deal with the worst of the symptoms, the new generation of chiefs quickly began to correct the cause of the coma—their loss of authority over their lands and their government. Attempts were made to negotiate with the federal and provincial governments, to lobby for a Canadian constitution enshrining meaningful aboriginal title, and to regain some autonomy within existing government legislation. These efforts have largely failed and now the chiefs find themselves in a Canadian court. The process of revitalization is slow, not only because of the cold environment of the nation-state culture but also because of the internal need for prudent care. Skills and practices necessary to keep a society and culture alive under great stress may not be the same ones needed for its vigorous reassertion. There will also be debate among those who feel resuscitation is urgent, those fearful it may be too soon, and even those who feel that death has already occurred and that the body should be buried. As with all recoveries from extreme shock, it is a time of uncertainty and of hope.

The subdued range of activities undertaken within the Gitksan and Wet'suwet'en system today does not, therefore, compare with that of the last century or of earlier periods. Nor does it indicate the full capability of a healthy Indian social and economic system. Today's chief finds his access to his territories denied by the state, their resources spoiled by industry; he has to secure well-paid work to lead his House's fundraising for the feasts and to provide for periodic crises in the House. He also finds his authority challenged by the state welfare system whose payments to House members require no reciprocation and by the coercive powers of state social service and resource management agencies. At the same time, he is increasingly engaged in the broad political and legal actions needed to reassert his ownership and jurisdiction. But because the vital elements of the system have been kept alive in the collective knowledge and practice of the people, the chiefs have the opportunity to take on their full responsibilities even in an economic and political environment quite different from when Gitksan and Wet'suwet'en authority was last vigorously exercised.

Gitksan and Wet'suwet'en Society

Dynamics. The structure, institutions, and rules of Gitksan and Wet'suwet'en society emerge directly from the most basic of human relationships—those of the family. Indeed, the evolution of society on the Upper Skeena can be thought of as an exploration of how far the idea of the family can be expanded in time, scale, and complexity without losing its essential characteristics.

Social and economic transactions here are face-to-face between people who know each other very well. They are oral rather than written, which means the exchange is intensified with both the receiver and the giver. There is no anonymity, no separation of knowledge and the knower. This makes unethical behaviour difficult and when it does occur, makes its consequences immediate and inescapable. Authority rather than power governs decisionmaking and authority is based on personal respect. In this context, political and economic decisions are by consensus, with greater weight given to the thoughts of those with proven ability, experience, and wisdom. There is democracy, not of one-man-one-vote but of identifiable although shifting factional interests. Decisions and laws are not policed. Instead, support is withdrawn from the person or group making the unpopular decision. Those who offend established laws and morals lose authority in the community. In earlier times, the breaking of certain laws, particularly those concerning trespass on House territories or fishing sites, allowed the offended person or the chief of the offended House to kill the law-breaker. This action was properly taken only after repeated warnings and when the stability of the system was being threatened. Times have changed and other sanctions are used today which, no doubt, will change again in the future.

These are not, however, stifling, inward-looking societies. Throughout both Gitksan and Wet'suwet'en history and continuing to the present, much importance, although not always contemporary approval, has been accorded to individual, and even quixotic, effort. Neither are they fragmented societies. Coherence is brought to the system by the constant interaction among people which is often, but not necessarily, accompanied by great love. This affectionate society extends back in time through the oral histories. Family links made thousands of years ago can be re-established for trade, exchange, or other purposes. The histories also record how familial ties were made with animals and how certain lineages came to be responsible for particular, well-defined areas of land. These historical events recognize a commonality of spirit among humans and all living things, including the land. This spirituality is the basis of the laws governing the peoples' relationship with the rest of the world.

Structure. For a Gitksan or Wet'suwet'en, there is no such thing as a purely legal transaction or a purely legal institution. All events in both day-to-day and formal life have social, political, spiritual, and economic as well as legal aspects. The structure the people have evolved to facilitate the family relationships described above is therefore an all-purpose one.

The primary political unit of the system is the House, named for the long house where many of its members lived at one time. All House members share a common ancestry that in most cases they can trace. They thus share a common oral history encapsulated in songs and in crests that are displayed on blankets and poles. People's responsibilities to each other and to the natural world are funnelled through the chief who is the land-owning entity in Gitksan and Wet'suwet'en societies. There is no higher political authority in the system than a House chief. Thus, the present BC Supreme Court title action is being brought by forty-nine Gitksan and Wet'suwet'en plaintiff chiefs with another twelve Gitksan chiefs from Kitwancool village choosing not to be part of the case for the moment. While the head chief is responsible for the actions of the House and its members, he does not act alone. Within the House, there are a number of other chiefs, the wings of the head chief, who must be consulted along with the elders of the House and, on larger matters, the chiefs of other Houses.

A person is born into his or her mother's House and succession to chief names comes through the mother's side. Those Houses that are closely related and that have shared historical moments remain important to each other. The chiefs of those Houses most frequently consult each other. The broadest grouping of related Houses is the Clan. There are four Clans in the Gitksan system and five in the Wet'suwet'en. Clan members know they are historically related but may no longer be able to recall the precise blood relationship that binds them. Clan identity is important in marriage law in that no one can marry within his or her own Clan. Marriage out of the Clan and succession through the mother tends to dissipate enduring male power blocs and diffuse both exceptional and non-exceptional individuals throughout society.

Although the societies are matrilineal, the father's side is important, particularly at the beginning and the end of a person's life. A father is expected to raise his children even though they are not members of his House or Clan. As they go through life the children reciprocate and when they die, it is their father's House that arranges their burial.

People in the region acknowledge that each Clan in their society has a counterpart in each neighbouring society, although the Clan names and some of the crests may vary. Many Houses also have early histories in common with Houses which today exist among other peoples. Travellers can make contact with distant relatives in villages outside their own society by recognizing the crests shown on poles, blankets, and house fronts. In this way an individual's kinship network extends over the whole region, although the fabric is much more tightly woven within his or her own people.

The most important economic transactions that travel through the network are the sharing of wealth within the House and the reciprocated payments for services between Houses. The reciprocity is reflected in the feasts, the most important of which are concerned with the succession of the name and responsibility of a head chief. These occasions give the authority of the community to the chief and to the system as a whole. While the daily interaction binds the society together, the formal exchanges at the feast reinforce its kinship structure. It is at the feast that a chief may exert political authority over Houses other than his or her own by validating or witnessing the succession of a new head chief, by confirming the host House's description of its territorial boundaries and river fishing sites, and by reaffirming the society's laws. But no Gitksan chief or group of chiefs has authority over all the Gitksan, although each has knowledge of the laws, history, and protocol of a number of neighbouring Houses and of more distant Houses with whom there are frequent marriage ties. Similarly, no group of Wet'suwet'en chiefs claim overarching authority over the Wet'suwet'en people. Each chief's authority extends over a part of the society, partly overlapping that of the next chief and so on until the whole society is covered by a woven mat of authority. The weave pattern of this mat reflects that of the kinship net.

Authority to deal with outsiders on specific issues on behalf of some or all of the chiefs in the society can be granted to anyone. In the past, this kind of authority was most commonly given to warriors to meet external threats of war or invasion. More recently, it has been used by the Gitksan and Wet'suwet'en chiefs together to assert their aboriginal title against the title claimed by the British Columbian and Canadian governments. It is only in this context that jurisdiction can be asserted beyond the House and Clan.

How Provincial Justice Fails

In modern nations such as Canada, control of antisocial behaviour is attempted by punishment of those individuals judged to be the immediate cause of the antisocial act. This process is carried out by specialist bureaucracies ultimately backed by the armed forces of the state. In practice, revenge rather than rehabilitation is the main purpose of this justice system. So-called criminals are therefore immediately removed from society by incarceration or, in the past, by death.

In Gitksan and Wet'suwet'en societies, control is effected largely by forms of social censure which range from casual counselling to formal events such as the shame feast. On these occasions, the emphasis is on compensation of the victim and his or her relatives rather than punishment of the offender. The responsibility for the action and the compensation for it is taken on by the extended family (House or Clan). These obligations of the House or Clan extend to events which westerners might consider to be accidents but which under Gitksan or Wet'suwet'en law are the responsibility of the House, such as when an incident occurs on a particular House's territory. Such a system of social control requires the existence of true community of the type that comes from a society small enough to permit face-to-face relations and with well-recognized kinship ties to allocate responsibilities.

The history of the Upper Skeena over the last 100 years records the displacement of the indigenous society by the enforcement of the Canadian justice system, at first overtly backed by arms, in recent years apparently less so. This social displacement resulted in cultural anomie with its usual baggage of symptoms such as family breakdown, child and spouse abuse, suicide, avoidable accidents, and alcoholism. These symptoms have drawn the attention of justice professionals, such as judges, police, and social workers, whose subsequent actions have largely served to intensify the social displacement. The following accounts indicate the crisis of the justice system's failure in the villages we serve.

A young teacher in an isolated village woke early one morning last September to find that someone had broken into her trailer. She describes what happened next.

> I called the police right away but it was one of the band counsellors who told me later in the morning who had done it. He said the young man was looking for alcohol. The police investigated over the next two days and arrested the youth later in the week. I agreed to lay charges. Two policemen worked for a

> week and drove a total of ten hours to process the case.
>
> Three of the accused man's brothers and sisters were students in my class. They told me he had done wrong and were mad at him for being so stupid.
>
> The young man pleaded not guilty to the charges but was convicted at a trial four months later on the strength of a confession to a Native special constable. His sentence was three months in jail and nine months probation. Later my students told me that the intruder was glad he was going to jail because he was bored in the village and never got to go anywhere. They said that as soon as he was released his brothers were planning a big welcome party which the younger boys wanted to attend.
>
> By the time the youth was released on parole after serving a third of his sentence, the episode had become a joke in the village. People were laughing at him for breaking into the home of a teacher who did not drink and were laughing at me because of my initial fear of the unknown intruder. As a condition of his parole, the man was told to stay away from alcohol. But his only encouragement to do this was the threat of returning to jail, which was no threat at all—just a self-defeating circle.
>
> There was no respect for the system, no respect for the punishment. No one learnt anything and no one was deterred from doing the same thing in the future. The efforts of the village leaders went unacknowledged by the authorities. As a victim, I received no respect, no comfort, and no justice.

As the final draft of this proposal was being completed, we learned that the youth in the above account had committed another break-in and this time had been sent to jail for nine months. In other cases, the justice system in more than merely futile: it actually undermines the efforts of people to deal with their problems, as the following disturbing story tells.

> A six-year-old girl was raped by one of her father's brothers. While the case proceeded against the offender, workers from the provincial Ministry of Social Services and Housing (MSSH)

> required the couple and their children to move from their village to a city 100 miles away. The idea was to protect the daughter but, because the parents were immature and were removed from their support system, the family began to break down and the children were eventually apprehended by MSSH workers.
>
> Upon hearing of the apprehension, the House members mobilized. It was not possible for one family to take all four children but soon arrangements were made that were satisfactory to them and their mother. Two women and a man, raised with the mother by their grandmother, agreed to care for the children between them. Although they would sleep in three different homes, the family would be together with their cousins during the day under the care of one of the women. The children were in their own village, surrounded by House members and with familiar and loving relatives.
>
> This arrangement was not accepted by MSSH or the court. The primary reason given was that the aunts and uncle were not registered as foster parents with the Ministry which, in any event, wanted all four children under the same roof. The court sent the children to a non-Native family far from their village. After six months, they were returned to the only registered foster home in their village. The foster parents were strangers to the children and one of them was an alcoholic.
>
> A condition of the temporary apprehension order was that the mother set up a home for herself and her children in the city on her $375 per month welfare cheque. Not surprisingly, she was unable to do this. If her House had been able to fulfill its responsibilities, they could have supported her with advice, information, food, goods, and money until she was able to take her children back. The House would have continued their support after the family was reunited and ensured the safety of the children.

This kind of story is commonplace. In these cases, it appears that the only strategy left to social workers and the courts is to scoop children away from their relatives, village, and support group. When serious offences such as sexual abuse and wife battering are involved, the victims are reluctant to press charges because they know the consequence will be the breakup of their family for which they will be blamed. As a result, the offenders often go free to repeat the crime, taking advantage of the impotence of western justice and its hamstringing of the indigenous system.

The incidents told above are not intended to offer a comprehensive review of how the provincial justice system fails Native people. Rather, they attempt to show that, with some knowledge of history and culture, it is possible to understand how the western system undermines and subverts existing methods of social control without being able to put anything effective in their place. We can also apply this knowledge to some of the current suggestions for alternative Native justice systems and identify those that will probably not succeed for the Gitksan and Wet'suwet'en.

As the analogy of the freezing man in the river indicated, the problems Native people have with western justice are caught up in broad social displacement that began over a century ago. This mitigates against the quick fix demanded by modern politics. If, as we suggest, the content of indigenous justice, that is, its principles, laws, and precedents, is to be used in a meaningful way, it must function within the structure of indigenous justice. Attempts to fit the content of one system into the structure of another are bound to fail. For example, several researchers have tried to codify Gitksan and Wet'suwet'en law and have not succeeded. This was not because they were incompetent but because interpretation of those laws depends on the context of the incident to which it is being applied, such as the relationships of the people involved and the ownership of the land where it took place. As a result, codification projects produce either a few lines of basic principles or evolve into long discourses on kinship, history, language, society, and culture which may be informative but are not legal codes as understood by western jurisprudence.

Similarly, the setting up of parallel justice system for Native communities —with Native police, Native courts, and Native jails—will not work unless the society already has equivalent institutions of its own. The decentralized Gitksan and Wet'suwet'en societies cannot accommodate the hierarchical court system and specialized enforcement powers of the police. This is shown by the failure of an earlier parallel justice system endured by the Wet'suwet'en and other BC Native villages at the turn of the century. It was introduced by the Oblate missionaries and called the Durier system after its inventor, Bishop Paul Durier. In his book *Will to Power*, historian David Mulhall describes how it worked:

> [The] Oblates appointed Catholic chiefs, captains, and watchmen. The captain was the chief's deputy, and he usually administered the frequent whippings meted out as a form of public penance. The watchmen were spies and policemen who detected the apprehended suspected sinners. But as well as repressing "pagan" practices and the vices learned from the whites, Durier wanted these Indian aides to help the Oblates to uproot Native spirituality and to sow in its place the seeds of Catholicism.

The church's vision of an Interior Christian Empire was overtaken by the secular powers of the federal and provincial governments. But the policy did not change. It was still to uproot all aspects of indigenous society, including its justice system, and to sow the seeds of western ways. Thus, the church chief and his watchmen were eventually replaced by the elected band council under the *Indian Act*—a misplaced institution that continues to create problems in Native communities.

Learning from this history, our proposal seeks to explore how the two legal cultures might coexist with dignity rather than try to thrust large parts of one system into the other.

Social Repair under Indigenous Justice

The chiefs have said that they intend to govern themselves according to Gitksan or Wet'suwet'en principles and laws. In many areas, there cannot be a simple switch from the imposed state system to indigenous self-government. The acute social crisis in which the people find themselves together with external circumstances much changed since they last exercised complete jurisdiction, demand a careful thinking through of how social repair and control of antisocial behaviour is to be accomplished. This thinking has begun and some ideas about Gitksan and Wet'suwet'en self-government can be outlined here.

If the indigenous system of the Upper Skeena is to have any validity at all, it is imperative that the ultimate responsibility for the members of a House and their land and fishing sites be placed on the hereditary chief of that

House. Not the chief as an individual and not as a member of some western-style board of directors or advisors, but as the focus of authority embedded in the kinship net of elders, relatives, and other chiefs. Now, it may well be that, as these responsibilities are re-assumed, some Houses may have to cast around to find appropriate people to perform some tasks. This would be particularly true if a chief or a member of his immediate family were accused of antisocial behaviour. However, the network is flexible and strong enough to be able to draw on someone with the authority and willingness to undertake the proper action.

In the light of this, it is equally imperative that social service professionals not be organized in such a way that they would tend to take on the task of social control. The usual bureaucracy of judges, police, and social workers, even if nominally under the control of the tribal group, would be a seductive but ineffective alternative to real community responsibility. But professionals will be needed. The process of social repair will require the skills of health personnel, social workers, and others. But if they are not part of administrative hierarchies with codes of conduct and statutory powers derived from the top, how can they fulfil their professional obligations? All professionals working in the public realm have, in effect, two functions. One is to apply their knowledge and skills to particular tasks, the other is to enforce policies determined by central governments or by the bureaucracies themselves. Put another way, how do we split off this enforcement function while maintaining professional standards of conduct and responsibility in the individual worker? And, at the same time, ensure that the people who require help do not fall in the cracks between hereditary authority and professional responsibility?

Worker contracts. One instrument of self-government that this proposal explores is a contract between the chiefs and each professional working within the Gitksan and Wet'suwet'en systems. Every contract would set out the rights and responsibilities of the chiefs and other House members under the hereditary system, the professional rights and responsibilities of the workers, and the referral process each would employ in their mutual interactions. The form of the contract would likely have to be approved by the chiefs as a whole but they would be involved as a body in overseeing the administration of services or determining overall policies. The contract would define relationships; policy would emerge from the interactions of each specific case, although, over time, it is easy to imagine customary procedures emerging as everyone becomes familiar with the process. It is anticipated that the workers would only have to be organized as a group for such matters as professional upgrading and providing themselves with appropriate facilities. Each contract would also define an arbitration process and appointment of arbitrators in case of dispute.

As summarized above, the worker contract would be one of the key documents of modern Gitksan and Wet'suwet'en self-government. By acknowledging existing relationships among House chiefs and House members and by defining relationships between the people and professionals at the individual level, it would create a decentralized support structure that would enhance the House system, not erode it. Such a structure would be a significant departure from current models for the administration of justice, social services, education, and resource management for Canadian Indian communities, whether run by central governments or under the various self-government agreements.

The design of the contract will involve detailed knowledge of the Gitksan and Wet'suwet'en systems as well as the legal and other constraints of the relevant professions. Its drafting will require a thorough process of consultation with both the chiefs and the professionals and will in itself be a process of taking technical knowledge that has evolved in western culture and adapting it to the indigenous system of knowledge and authority. The initial contracts will be researched and developed as part of the Unlocking Aboriginal Justice Project. Researchers will look for ways to resolve the conflicts between the contract and existing professional codes of conduct. They will also have to consider how the contract would bind a worker who is not Gitksan or Wet'suwet'en, in the absence of centralized enforcement powers. Later revision to the contract would be initiated by the chiefs as they saw the need and would be developed by themselves or with advisors of their choosing.

At first, the contracts would apply to the staff of the two law centres and with other social programs administered by the groups making this proposal. Other social service, health, and legal professionals may adopt them in the future, either voluntarily or at the request of the chiefs. In practice, the contract will be a code of conduct as much regulated by the marketplace as by any formal lines of authority. In other words, skilled professionals who understand and respect the system they work in will be in more demand that those who do not.

Areas of interaction with the provincial system. From consultation with the staff and directors of the groups making this proposal, we have identified four priority social issues that need particular, but not exclusive, attention. They are assault, spousal abuse, rape, and child sexual abuse. Not all cases will be immediately amenable to alternative methods but we have selected four areas of provincial justice that could be efficiently administered within the Gitksan and Wet'suwet'en systems in a relatively short time period.

This section of the report looks at those four areas and sees how responsibility might be shared without undermining the integrity of either the indigenous or provincial system. We intend to research these options further in the first phase of the proposed work. The areas are as follow.

- **Diversion.** Present criminal law practice in BC allows that, when a person admits to an offence and accepts responsibility for it, he or she may be returned to the care of the community without charges being laid and therefore without any formal proceedings. This procedure is legislated only for those persons under eighteen years (*Young Offenders Act*, Sections 4 –5). The *Act* requires the Attorney General to authorize the program and the young person to consent to participate after having had an opportunity to talk with a lawyer. The legislation places no constraint on the severity of the offence that may diverted. If the participant substantially breaks the terms of the diversion agreement, then prosecution may follow. Diversion may be applied to adults but the procedure is more difficult in the absence of specific legislation.

We feel that more extensive use could be made of this procedure for both youth and adults from the Gitksan and Wet'suwet'en villages. A diversion program here would need appropriate education and training of community leaders, legal information counsellors, and provincial agency workers. As well, the responsibilities of all participants and the lines of communication between them would have to be well-defined and, in particular, there would have to be a formal role for the family and House of both offender and victim. These people, together with the Crown prosecutor, would decide whether a particular case would be diverted or not.

- **Sentencing advisors.** Some Canadian jurisdictions allow that, after an offender has been found guilty in criminal court, the judge may, with the offender's consent, take on the bench two or three members of the community to hear evidence on sentencing and share in the sentencing decision. This is different from the common practice of speaking to sentence. As with diversion, this procedure may be particularly appropriate where both the offender and the victim of an offence are from the same community. In such cases, we can imagine one sentencing advisor coming from the offender's House group and another coming from the House of the victim.

The design of a sentencing advisors program would have to accommodate two, perhaps opposing, tendencies. One would be for the community advisors to be overwhelmed by the judge and to defer to his opinions. The other would be for the advisors to call for excessive punishment because of bias against the offender. Accommodation could be achieved by the judge instructing the advisors on Canadian law and precedents and the advisors instructing the judge on Gitksan or Wet'suwet'en law and precedents. Together, they could determine a sentence within the limits of both systems.

- **Parole advisors.** The principle is the same as with sentencing except that the community leaders sit with the parole board reviewing parole applications from community members. Again, this role is distinct from that of workers who may advise prisoners on their parole applications. Gitksan and Wet'suwet'en prisoners are sent to jails far from their home villages, Terrace for minor offences, and Prince George and the Lower Mainland for more serious offences. Distance would make it difficult for the community to supervise day release programs, although such involvement would be crucial before prisoners are released to their villages. It may therefore be necessary to have workers trained under this proposal in the prisons to encourage prisoners to assert their parole rights and to liaise with their community support group.

- **Alternative dispute resolution.** More family and civil law cases currently going to court could be settled within the community if the necessary advice and skills were available to reinforce the indigenous system. Despite the social anomie of the last half century, a great number of disputes are presently settled within the laws and legal practice of the Gitksan and Wet'suwet'en. In contrast to the areas outlined above, this procedure may require less formal involvement of provincial justice officials, although the requirements for education, training, and evaluation will be just as high.

In each of the areas of interaction outlined above, tension exists between the two systems of justice. The rights of the individual pull against the rights of the community. Western justice is almost entirely concerned with the former while Gitksan and Wet'suwet'en justice seeks to balance the two. We anticipate this tension manifesting itself in two areas that will require research before the proposal is implemented.

The first concern is one that might be voiced by a defence lawyer about the rights of an accused person to due process of law. She may see her clients' rights in a possible later trial being jeopardized by the community consensus process. There are indications that these concerns can be addressed. In recent years, lawyers and judges have tended to deal with family issues in the justice system differently from other matters by giving as much consideration to the family as a whole as to the individuals in it. This development should be studied to see if it can be extended from the nuclear family to the extended family and community and from civil matters to criminal.

The second concern is the present obligation of social and health workers to report crimes as soon as they are aware of them. This requirement would defeat any attempt to reach alternative resolutions that, for example, may keep a family functioning in a case of child sexual abuse. Again, this is not an insurmountable problem as long as provincial social and justice agencies agree to protect program workers from prosecution for not reporting alleged offences in certain circumstances.

A current case from one Gitksan village serves to summarize the aim of this proposal. It illustrates what people are doing now to make their system work in the Canadian context and what could be done if the training and agreements we are suggesting were implemented.

> A man has been charged with causing major property damage in his village. His trial will take place soon. His House has collected the $2,500 required to pay for his defence and anticipates contributing several thousand more for his fine. In this effort, they

have sought the help of closely related Houses within the Clan. Those who are working and who have high names are expected to pay the most, and, as a result, will get to castigate thoroughly the offender. These people will ensure the offence is not repeated because it is costing them too much.

The House members complain that the money they are contributing is going to outsiders. They say that, if provincial justice had not intervened, the matter would have settled by the offender's House and Clan by restoring the damaged property or by putting on a shame feast. In either case, further money would have been paid to the other clans for witnessing that proper compensation had been paid. Although the total amount might have been tens of thousands of dollars, at least it would have stayed in the community. In addition, the province would have saved about $20,000 for the trial.

THE PROPOSAL

Goals

The purpose of this proposal is to reduce drastically the large numbers of Gitksan and Wet'suwet'en people who become involved with the provincial legal system. For the communities involved, this will be part of the process of social repair by allowing the elders and leaders of the community to assume more responsibility for the well-being and safety of their members. For the provincial government, it will mean reduced social service costs, initially in policing, the courts, probation offices, and prisons, but eventually in a wider range of welfare and health services.

Objectives

The overall objective is to have in place after three years, a thoroughly researched program. Participants will be well-informed and trained participants in appropriate areas of interaction with the provincial and indigenous justice systems, areas that can be evaluated to determine the feasibility of this joint approach to the Native justice issue. Subsidiary to the main objective are three year-end objectives that can be used to evaluate the progress of the program.

Year 1

- Complete research on legal and other aspects of worker contracts and on selecting appropriate areas of interaction.
- Evaluate legal research and decide with provincial officials on the feasible areas of interaction.
- Complete research on materials for training and communication, including computerized genealogical data bank and indigenous case histories.
- Develop training and education programs for community leaders, legal information counsellors, other legal service staff, provincial officials, and social workers.
- Develop and begin to implement communication programs in both the Native and non-Native communities.

Year 2

- Deliver appropriate training and education programs.
- Set up necessary agency coordination.
- Continue the community communication program.

Year 3

- Implement and monitor program.

Research

What we are proposing is not so much research as translation—translating structures, relationships, and ways of thinking from one culture to another. This procedure would establish the common ground for interaction. We regard the following areas of translation as essential prerequisites to developing the training and restructuring that will implement this proposal.

Genealogical charts (identity translation). In western society, we are identified as individuals, with only scant official notice taken of our immediate nuclear family and possibly our workplace. A Gitksan or Wet'suwet'en person is identified within a complex kinship net that extends forward and backward in time and which has the House as its primary unit. Helpers, mediators, spouses, and reincarnates can only be identified by reference to the House of the person's mother and father.

Kinship information is most usefully stored and displayed in genealogical charts of each House group. Such charts for every Gitksan and Wet'suwet'en House have already been researched and drawn and would be available for this project. But to be useful in a working context, the data would have to be transferred to computer storage for both easy retrieval and for efficient updating by non-specialist workers. This requires a computer program be written and a considerable amount of data input. The existing hand-drawn charts rely very much on the memory of the genealogist.

In summary, the main purpose of a computer-based genealogical data bank would be to help the dislocated find their place in the society and to identify the chiefs and other potential helpers who would be responsible for both offenders and victims of antisocial acts.

Case histories (legal translation). It has already been explained that the nature of Gitksan and Wet'suwet'en law is such that it cannot be codified. It consists of a few unbending principles and a body of evolving case law that is carried in the oral histories, crests, songs, and in the memories of the elders. Because some of the vitality has been withdrawn from the day-to-day practice of the law in recent decades, the case histories would have to be carefully reviewed by elders and knowledgeable younger people to ensure their appropriate application to modern situations.

There already exists on audiotape and in written transcripts a significant body of legal information. Some additional key wording is required to make it more accessible and development research will be needed during the training and early implementation phases of the project.

Program development (administrative translation). Earlier in this proposal, we considered for development four areas of interaction of the two systems of justice. They were diversion, sentencing advisors, parole advisors, and alternative dispute resolution. These areas will need further research to determine if they can be practically implemented. Final selection would be made in consultation with provincial officials.

Once the final interaction areas have been selected, the program will have to be developed for implementation.

Worker contracts (relationship translation). As already described, because the indigenous system would be undermined by hierarchical boards and committees, it is necessary to define in individual contracts the professional workers' relationships to their clients and to the society as a whole. In short, the contract would bind the workers in very concrete terms to respect the system's integrity, to ensure ultimate responsibility stays with the House and its chief, yet at the same time allow the workers full exercise of their professional obligations.

The contract is seen as the key concept of this proposal and thus will require careful drafting and much discussion among the people, their leaders, and the professionals.

Communication and Training

By now it should be clear that implementation of this proposal will require as much commitment and work from the Gitksan and Wet'suwet'en communities as it will from the provincial government and justice professionals. The community should therefore take an early lead in its research, development, and implementation. This can be done through the proposed communications program which will initially reach all Gitksan and Wet'suwet'en and then allow those interested to progress in a series of steps to the detailed training courses that will be essential for legal service and other workers. Once a step has been started, it will continue to function so that people can inform themselves at any stage in the process. In this way, everyone has some information about the Project while those with House leadership and professional responsibilities or who wish to learn more can take their interest as far as they wish.

We see five steps in the communication/training program, to be phased in over the first two years of this proposal.

Medium	Participants	Content
1. Newsletter	All G & W	General information
2. Village meetings	Chiefs and all interested G & W	Go-ahead decisions
3. House meetings	House members	Information exchange and instructions
4. Orientation	Chiefs, leaders, staff, boards, government agencies	General training
5. Development	Chiefs leaders, legal service staff	Detailed training

We anticipate that participants from the Gitksan and Wet'suwet'en communities and from the provincial and federal justice agencies will attend the same sessions. For the Gitksan and Wet'suwet'en professionals and board members the training will take place within the context of the person's House group. Attempts will be made to recruit at least one community participant from each clan in each village.

Because community authority is widely disseminated, mass communication will be required rather than meetings with a few leaders. We are therefore proposing a program of mailed newsletters and large community and House meetings. Their purpose will be to exchange ideas, make decisions, recruit workers and volunteers, and inform funding agencies. All three groups making this proposal have extensive experience in community communications of this type.

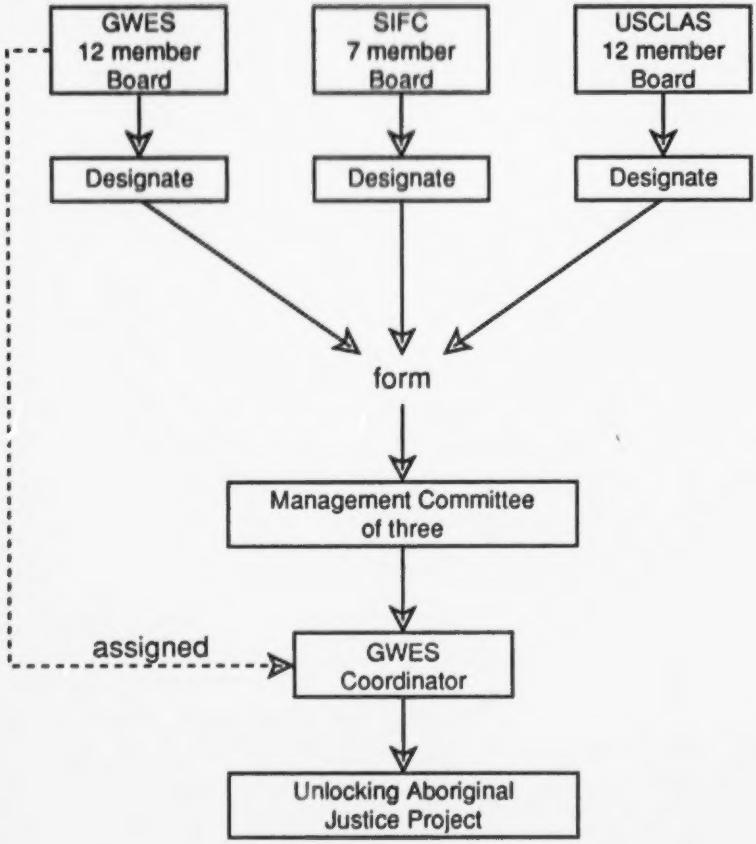
Management Plan

The three groups making this proposal will jointly administer the Unlocking Aboriginal Justice Project. All three are registered under the *Societies Act*. The boards of directors of each group will designate one of their members to serve on a management committee that they will authorize to act on their behalf with respect to the Project. The designates will regularly report back to their boards.

The management committee will provide overall direction and policy-level management for the Project. It will be responsible for hiring key staff, receiving regular progress reports, and reviewing all the materials developed.

The Gitksan-Wet'suwet'en Education Society's Coordinator will work directly under the management committee with all phases of the Project. As well, the Coordinator will be responsible for the financial management and reporting requirements of the Project. The Communications Coordinator hired for the Unlocking Aboriginal Justice Project will provide the daily direction and supervision for the other project staff. The Communications Coordinator will be accountable to the management committee for the duration of the Project.

The management structure is shown by the following diagram.


GWES
12 member
Board
SIFC
7 member
Board
USCLAS
12 member
Board
Designate
Designate
Designate
form
Management Committee
of three
assigned
GWES
Coordinator
Unlocking Aboriginal
Justice Project

This structure is intended to exist only for the first year of implementation. Then the primary responsibility for meeting the goals of the Project will rest with the Gitksan and Wet'suwet'en Houses. The professional liaison responsibility will be with the staff of the two law centres. The Boards of both the Friendship Centre and USCLAS will have to mandate the change in orientation so the offices work with both state agencies and Gitksan and Wet'suwet'en support systems. In anticipation of that reorientation, we have budgeted in this proposal for the training of relief staff needed to maintain services while the legal information counsellors participate in the development of the new approach.

We suggest that the Project be independently evaluated at the end of each year. The evaluation team should include persons with practical experience and knowledge of both the provincial and the Gitksan and Wet'suwet'en justice systems, an expert in the problems of Native people in the Canadian justice system, and leaders from the community not directly involved in the project. As well, the Project's research phase will attempt to develop a statistical measure of Gitksan and Wet'suwet'en involvement with the provincial justice system and the associated court costs.

Budget

The total costs of the three-year program we are proposing is just over $2 million. The details are given in the budget at the end of this section. Three-quarters of that amount is scheduled to be spend in the second year, most of it on the training course. Within the training program is the largest single item in the budget: $840,000 for trainee support while they take the course. This support will enable people from the community to participate without financial concerns and will allow law centre staff to be trained without diverting scarce operating funds. The schedule also means that the bulk of the budget will not be committed until the research, curriculum development, and community meetings are evaluated at the end of the first year. The first year budget is $335,210.

True to our belief that an effective and principled justice system for the Gitksan and Wet'suwet'en has to be rooted in the community rather than a bureaucracy, the structured part of the program is set to phase out after four years. We estimate that by that time the substantial investment in training will be paying dividends. A five-year budget summary illustrates this point.

	Year 1	Year 2	Year 3	Year 4	Year 5
1. Staff	134,640	134,640	95,040	68,640	0
2. Office	60,400	37,800	35,000	15,200	0
3. Other	140,170	144,770	54,960	0	0
4. Training Course	0	1,163,190	0	0	0
	335,210	**1,480,400**	**185,000**	**83,840**	**0**

N.B. This proposal only covers the development period of years 1 to 3 and not the operational period from year 4 on.

The data shown above can be recast to indicate the relative amounts budgeted for the various programs within the proposal.

	Year 1	Year 2	Year 3	Year 4	Year 5
1. Research	168,500	53,725	38,670	0	0
2. Communication	71,200	53,800	45,875	41,920	0
3. Training	95,510	1,372,875	0	0	0
4. Implementation	0	0	100,455	41,920	0
	335,210	1,480,400	185,000	83,840	0

DETAILED 3-YEAR BUDGET

		Year 1	Year 2	Year 3
1.	**Staff**			
	Communications/Coordinator	36,000	36,000	36,000
	Education Coordinator	36,000	36,000	0
	Library Technician	26,400	26,400	26,400
	Computer Operator	24,000	24,000	24,000
	Benefits	12,240	12,240	8,640
		134,640	**134,640**	**95,040**
2.	**Operation**			
	Office Rent	14,400	14,400	14,000
	Furniture	5,000	0	0
	Computer/Plotter	23,000	0	0
	Supplies	3,600	3,600	2,400
	Photocopying	6,000	3,600	3,600
	Telephone/Fax	3,600	3,600	3,600
	Postage/Courier	4,800	4,800	2,400
	Equipment Maintenance	0	9,000	9,000
		60,400	**37,800**	**35,000**
3.	**Other**			
	Legal Research	23,040	11,520	11,520
	Genealogy Computer Program	20,000	0	0
	Printing/Distribution	6,000	6,000	6,000
	Community Meetings	7,200	5,000	5,000
	Relief LIC Training (4 x 15 wk)	30,000	0	0
	Travel	12,000	5,400	0
	Evaluation	20,000	20,000	20,000
	Administration (at 7%)	21,930	96,850	12,440
		140,170	**144,770**	**54,960**
4.	**Course Delivery** (12 months)			
	Instructors (2)	0	86,400	0
	Part-time instructors (2)	0	48,000	0
	Trainee Support (35)	0	840,000	0
	Benefits	0	97,440	0
	Classroom Rent	0	12,00	0
	Renovations	0	15,000	0
	Furniture	0	12,000	0
	Utilities	0	3,600	0
	Equipment/Computers	0	25,000	0
	Supplies	0	6,000	0
	Student Materials	0	8,750	0
	Photocopying	0	6,000	0
	Telephone	0	3,000	0
		0	**1,163,190**	**0**
	Totals	**335,210**	**1,480,400**	**185,000**

Total for 3-year program $2,000,610

CONCLUSION

In this report we have described the dislocation of aboriginal society by the particular type of justice brought in by the European colonists. We have proposed a process and a set of immediate initiatives that would allow the co-existence of mainstream justice with the laws and legal institutions of the Gitksan and Wet'suwet'en.

Many elements of our proposal are contained in the 1988 report of the provincial Justice Reform Committee. The Committee recognized the need for particular arrangements between the two systems. On page 203 of the report, the Committee says:

> [It] is recognized that Native people have traditional values and customary ways that the justice system can and should accommodate. Native people tend to resolve disputes through mediation or conciliation: bringing the community together. There is much scope for this approach within the present justice system.

Despite its condescending language, this statement echoes what we have said. On the same page, the Committee underlines our choice of diversion as one of the main avenues of interaction:

> Diversion programs offer another opportunity to accommodate Native values within the existing justice system. Native groups should be encouraged to develop their own diversion programs to assist Native people in trouble with the law.

The Committee sums up its consideration of aboriginal people and the justice system in the following way:

> Unquestionably, a disproportionate number of Native people are in conflict with the criminal law. This poses serious problems for the justice system. The critical issue is the system's ability to balance the needs of Native people with those of the remainder of the population. In many respects this is a national problem, but there are initiatives that can be taken at the provincial level.

When it talks of balancing aboriginal people's needs for justice with those of the rest of society, the Committee seems to imply that a gain for one is a loss for the other. While this proposal has emphasized the benefits to the Gitksan and Wet'suwet'en of the interaction, we believe the provincial justice system could gain much from adapting elements of the aboriginal system into its processes.

Another recent report looking at Native people and the law points to the Gitksan and Wet'suwet'en potlatch or feast systems as viable examples of alternative dispute-resolution structures. The 1988 statement of the Canadian Bar Association Committee on Imprisonment and Release provides a succinct concluding argument for the objectives and methods we are proposing here:

> There is here the nucleus of a Native justice system which, while it does not mirror the normal Canadian model of adjudication, may hold far more promise in responding to problems facing members of the Gitksan and Wet'suwet'en Nations.
>
> That is not to say the traditional system stands ready and able to respond to the full range of problems presently dealt with within the criminal justice system, nor is it to say that the ordinary court system is not appropriate to deal with some of these problems. What is being suggested here is that there is a real possibility of developing distinctively Gitksan and Wet'suwet'en responses based upon a realistic assessment of the strength and limitations of both their own institutions and those of the larger Canadian society.

APPENDIX A: UPPER SKEENA COUNSELLING AND LEGAL ASSISTANCE SOCIETY

Introduction

The Legal Assistance Society was formed in 1975 with the goal of organizing and delivering legal services to the Gitksan and Wet'suwet'en people. The Society was incorporated, an all Native staff was hired, and funds were obtained from the Legal Services Society of BC. The USCLAS Board has always had representatives from each Gitksan and Wet'suwet'en village as well as one from the local chapter of the United Native Nations.

Since 1975, the Society has changed and expanded its services. Gitksan and Wet'suwet'en people are assured of professional legal services in the mainstream justice system. These services are enhanced by close working relationships with the legal services offices in Terrace and Smithers and the Native Programs Branch of the Legal Services Society.

Board Members

Hagwilget	Walter Joseph
Moricetown	Amy Williams
Gitanmaax	Chris Patsey
Kispiox	Ralph Michell
Gitsegukla	Sharon Russell
Glen Vowell	Marvin Sampson
Kitwancool	Dr Peter Williams
Gitwangak	Andy Clifton
United Native Nations	Emma Pierre

Executive

President	Ralph Michell
Vice-President	Andy Clifton
Secretary/Treasurer	Chris Patsey

Staff

Administrator (Acting)	Gordon Sebastian
Staff lawyer	Gordon Sebastian
Legal secretary/bookkeeper	Lyn Mowatt
Legal information counsellor	Jack Sebastian
Legal information counsellor	Karen Morrison
Receptionist	Angela Smith Shanoss

All board members are Gitksan or Wet'suwet'en. Since the law office's inception, it has been staffed by Gitksan or Wet'suwet'en persons except for staff lawyer Peter Grant from 1976 to 1979 and staff lawyer Murray Miller in 1985.

Law Office

The centre has served over 1,000 people since April 1987. In 1987, the service increased by thirty-three per cent. From 1987 to 1988, the service expanded again, largely in the areas of criminal law and civil litigation. In 1985–1986, we saw an average of 2.51 clients per day; in 1986–1987, this average increased to 3.27; and in 1988, we served more than 5 people per day.

Law Office Operation

We act for eligible clients under legal aid criteria. Many people are not eligible yet cannot afford a lawyer. We act for these people who give a token donation for services. In child protection cases, the band councils pay expenses and disbursements but not legal fees. In some criminal cases when a legal aid lawyer cannot be found, the USCLAS staff lawyer absorbs the work at no cost to legal aid or the band councils.

In addition to the law centre activities, we have the Legal Aid Directorship for the area. This means that staff members have the authority to approve legal aid applications. Legal Aid pays for legal fees for criminal, family, and aboriginal hunting and fishing rights cases.

We provide services to the 7,000 Native people and 7,000 non-Native people living in the area from Kitwancool to Smithers. The staff attends court in New Hazelton, Smithers, and Terrace.

APPENDIX B: FRIENDSHIP CENTRE PROGRAMS AND SERVICES, OCTOBER 1988

The Smithers Indian Friendship Centre exists to facilitate aboriginal people's access to services, participation in community life, and cultural expression. It also helps improve harmony and understanding between Native and non-Native individuals and institutions.

The Centre is a non-profit charitable society that has been incorporated since 1975. Membership is open to all people who support the above aims. It is one of 100 Friendship Centres located across Canada that are supported in part by the Federal Secretary of State. The Centre is located at 3743–2nd Avenue in Smithers.

You are always welcome to drop in for coffee, to meet friends, and visit our staff.

We run nine programs to meet the objectives of our constitution. These are developed at yearly planning sessions.

Workshops and Education

The Centre has run workshops for the community on issues such as public speaking, sexuality, adoption of Native children, and land claims. We helped produce *Hardtimes*, a comic book about welfare in British Columbia, and have helped direct community attention and solutions toward the problem of child sexual abuse.

The Centre has sponsored job development projects for Native people through Employment and Immigration Canada. In the past few years, a traditional hide-tanning training program and a computer operator training program have been successfully completed.

The Centre currently sponsors a Family Daycare Training Program for twelve Native women that began on 12 September 1988.

We serve as a placement/training location for job re-entry programs run by other organizations and agencies. Each summer, we hire Native students for training and job experience under the Challenge summer student program.

Service Programs

The Centre offers service to clients for a wide range of non-legal matters:

- Thursday luncheon
- community worker placement
- drug and alcohol awareness
- language translation
- Status application assistance (Bill C-31)
- income tax assistance
- emergency fund (for housing and family needs)
- coffee drop-in
- welfare advocacy
- telephone access
- housing applications
- medical applications
- letter writing

Networking and Community Support

The Centre Board and staff in work with groups such as the Community Health Committee of the Bulkley Valley and District Hospital, Smithers Receiving Home, Smithers Youth Centre, Gitksan-Wet'suwet'en Education Society, Smithers Human Rights Society, Smithers Community Services Association, and the Northwest Chapter of the BC Association of Social Workers. We provide an office location and answering service for the Native courtworker and a meeting location for community groups such as the United Native Nations and Alcoholics Anonymous.

We help other non-profit community groups such as the Mental Health Network, Alcoholics Anonymous, and the Smithers Human Rights Society by allowing access to our office equipment and meeting rooms as needed. We also work closely with other Native organizations and band councils around issues of concern to Native people.

We participate on the Local Advisory Committee to our federal Member of Parliament, advising Employment and Immigration Canada about training needs and employment opportunities.

Native Cultural Awareness

The Centre has sponsored two performances of the Headlines Theatre play NO'XYA' in Smithers. Through events such as this, awareness of Native concerns and culture are raised in our community.

We have written articles about Native affairs for publications in the local newspaper and in magazines having an international readership, including the *New Internationalist*. We publish a quarterly newsletter, promote elders meetings, and have conducted workshops to foster better understanding of land claim issues and other Native concerns.

Recreation and Fundraising

Through our own fundraising we try to sponsor as wide a range of recreational activities between Native and non-Native people as possible. Bake sales, yard sales, flea markets, and raffles help to contribute for funding of men's and women's softball teams, winter gym night for young men, bowling, skating, and a week-long summer soccer clinic for youth.

Lobbying and Briefs to Government

Grassroots front-line organizations such as ours endeavour to assist the provincial and federal governments to develop policies and programs that are effective and meaningful for the people they serve.

In 1987–1988 the Board and staff of the Centre wrote and presented the following papers and briefs:

- presentation to the BC Liquor Policy Review;
- brief to the Fisher Commission on Electoral Boundaries;
- letter to the Attorney General for Native representation on the RCMP Complaints Commission;
- brief to the Lieutenant Governor in Council and Law Society of BC asking for Native lay representation on the Board of Directors of the Legal Services Society of BC; and
- brief to the BC Justice Reform Committee.

We have assisted community organizations and groups in running several workshops on sexuality and child abuse prevention and have purchased anatomically explicit dolls for use by the psychiatric social worker assisting with disclosures by victims of sexual abuse.

Prevention of Child Sexual Abuse and Family Violence

The Centre Board and staff have been active for several years in attempting to develop programs and actions in the area of child sexual abuse prevention.

We have received funding from the BC Attorney General to run a Family Violence Victim Assistance Program for Native and non-Native people in the Bulkley Valley. Victims of family violence may call 847-2999 to receive support and counselling to better access the justice system.

We have received funding from the National Association of Friendship Centres to hire a child abuse prevention coordinator for the area. These programs are now underway.

Economic Development

The Wet'suwet'en arts and crafts storefront is the most visible part of our efforts at economic development. This store has served as a focal point for area craftspeople who sell their goods on consignment on Main Street in Smithers. In addition to providing supplementary income for Native craftspeople, the store is the only one in Smithers specializing in sales of genuine Native crafts. The store acts as a valuable tourist attraction for the town of Smithers. The store sells craft materials at low cost to craftspeople. Sewing and other craft training are held at the centre on a regularly scheduled basis. Elders are encouraged to participate and to teach their skills to new craftspeople.

Legal Programs

The Centre employs two legal information counsellors and a legal secretary under contract with the Legal Services Society of British Columbia. These employees are responsible for giving legal information, assessments for legal aid, lawyer referrals, and public legal education to those people requesting this help. They see clients in the Smithers area, both Native and non-Native, on matters of civil, criminal, and family law. In addition to these duties the counsellors are responsible for public legal education in the Smithers area.

APPENDIX C: PROFILE OF THE GITKSAN-WET'SUWET'EN EDUCATION SOCIETY

- Formed in 1982.
- Registered as a non-profit society with the BC Registrar of Companies.
- Has an annually elected board of twelve directors.
- The purposes of the Society include: to promote the availability of high quality education and educational training facilities for the people in the Gitksan and Wet'suwet'en area; to establish, develop, and enhance training, educational, and cultural programs and opportunities for people in the Gitksan and Wet'suwet'en area; and to promote the development of an educational system that will meet the needs of the people in the Gitksan Wet'suwet'en area.

- Since its inception, GWES has developed and implemented the following training and education programs:
  - a four-year Teacher Training Degree Program that successfully concluded in 1986 with nine graduates;
  - a one-year Fishery Technician Training Program with fifteen graduates;
  - a ten-month Addictions Resource Worker Training Program with thirteen graduates (a second Program began in September 1988 with another twenty-three students);
  - a one-year Women's Job Re-Entry Program with sixteen graduates;
  - a Carpentry Training Program that now has ten carpentry journeymen and eight third-year apprentices;
  - a six-week Court Interpreter/Translator Program with fourteen graduates;
  - a two-year Forestry Technologist Course, now in its third term;
  - numerous short courses for specific skill development needs; and
  - in September 1989 and January 1990, GWES will deliver two ten-month Child Sexual Abuse Prevention Training Programs for thirty-six trainees drawn from northwest BC.
- In addition to the training programs, GWES has begun working with a number of social services programs. At this time, the society sponsors, coordinates, and administers the following programs:
  - the Gitksan Wet'suwet'en Employment Services Office, an outreach office with three employment counsellors funded by the Canada Employment and Immigration Commission;
  - the Community Awareness and Prevention Services Program (C.A.P.S.), with four addiction counsellors federally funded through Health and Welfare's Native Alcohol and Drug Abuse Program (N.A.D.A.P.);
  - the Child Welfare Program, with one staff person intended to develop child welfare policies, service descriptions, and delivery systems;
  - the Hazelton Youth Centre, with one staff person funded by the Ministry of Social Services and Housing (MSSH);
  - the Special Services Child Care contracts with the Gitksan Wet'suwet'en Local Services Society, a program with one staff person;
  - forestry contracts with the Gitksan Wet'suwet'en Local Services Society, with one staff person; and

  - — a Family Initiatives Program called Connections, with two counsellors funded by MSSH.
- The Society has purchased a building with the goal of establishing an educational and social service centre that will house C.A.P.S., the Youth Centre, the Connections Program, and the Child Sexual Abuse Prevention Program.
- The Education Society has two full-time and one part-time staff members. The salaries for these employees are presently covered by local fundraising, contract fees, and a small administration percentage charged to programs whose budgets can support the fee.

16

A NEW MEDIATION MODEL FOR USE IN ABORIGINAL COMMUNITIES

RESOURCE PERSONS

Marg Huber, Planner/Trainer, Conflict Resolution, Vancouver, BC

Cliff White, Planning/Training Consultant, Nawaabm Enterprises Ltd., North Vancouver, BC

The following discussion considers a mediation model for aboriginal communities. The objective in creating this spirituality-based model was to empower Native people to deal with conflict in their contacts with the white justice system and in their own communities. Empowerment is enhanced by using a process that is culturally appropriate and adaptable for different aboriginal groups in different settings.

INTRODUCTORY REMARKS

Cliff White

We are only in the preliminary stages of using mediation with the Native community. In mediation and working with Native people, spirituality is the main ingredient. It is a way of purifying one's mind, one's body, one's soul. With the Native community system, you feel that you can come into a room with a number of elders and communicate with them—without saying a word or having them say a word to you. The Native people have traditionally had that sense—a sense that has become much more acute and involves feelings and vibrations as well as body language in communication.

Native people need to heal. And spirituality is the way for the Native people to start healing, whether it's Christianity, the sweat lodge, the long house, or cold baths. Regardless, spirituality is the basis of the Native mediation model we would like to develop with the Native community.

I mentioned to a chief that I had been invited to do a conference presentation on mediation and asked what he thought about that. He came back to me the next day, saying, "What you discussed with me yesterday is what we've been doing in our long houses all the time." That process continues to be there. We have to be able to continue to use the process more openly than we have in the long house. If a healing process is going to happen, it's got to come from the Native community. The non-Native communities are very committed to the issue of trying to bridge that gap, assisting the Native community by healing and helping. We are now reaching out to the Native community. We need to be more involved in the process of mediation and negotiation. The question is: "How can we make these programs work for the Native community? More specifically, what are the cultural values that we need to learn more about?" We need to bridge that gap if we want to make the mediation and negotiation strategy models in the non-Native community work more effectively for Native people.

Marg Huber
Mediation, used quite widely in the white culture, is appropriate for people in Native communities as well. To date, however, most of the focus has been on the urban setting, so it is a process in development and we are still asking ourselves many questions. The more we tend to understand, the more questions open up. This process involves much ongoing learning. For example, it is important to consider the values of Native culture when asking questions about the resolution of conflict in Native communities, questions such as who resolves conflict.

At the present time, I train people in mediation and negotiation techniques and strategies. I am a mediator in private practice. I have had the opportunity to work with a group of Native courtworkers in British Columbia, teaching them mediation skills. They found that they were comfortable with the process and that they had been using models that didn't work.

Mediation can be defined as a process in which a neutral third party assists two others with different points of view to resolve their differences. In this negotiation process, the third party does not have a vested interest in the outcome. So, if I'm a community leader, I would have to be impartial to the dispute in question. Mediation is designed to assist the two parties to hear and understand one another, and to work together toward a solution. The mediator guides the two parties, helping them to step into each other's world so that they can develop some creative resolution options.

People initially come to a mediator not because they must but because they want to. The discussions involving the mediator and the two parties are confidential. The primary challenge is to become focused, and remain focused, on the particular issue that is in dispute. We have put our energy into designing a mediation model that is quite unusual in several basic ways. As a mediator, I attempt to be as creative as possible to help the two parties address present and future issues rather than discussing what happened in the past. The past is past. There is little benefit to either party in deciding whose version of the past is most accurate.

Question

Member of Audience. In Alaska, we have run into difficulties in attempting to use conflict resolution. We have told the Native people, "You figure out what you want to do with it." That seemed to cause more conflict. I don't think they have ever tried to mediate their problems. For example, people have taken some of the clan-owned things, such as crests, and sold them. When attempts have been made to retrieve these objects, the people who are not traditional say, "Well, that belongs to me." Or "That is not part of the traditions." How can this be handled? These few incidents can create major problems. Where does mediation come in?

Response **Cliff White.** Basically, the heads of the households would be the mediators, even though they would have a vested interest. They need to make sure that their houses can keep peace and harmony. If they have a problem with another house, that other house would also have its mediator. If both houses have problems, then they both have a vested interest in working problems out between themselves. They both have an interest in choosing the best mediator to mediate between them. In the Native clan system, you meet together to address a problem and you put people in a circle where everybody is an equal. They then try to resolve the situation communally—not "you have a vested interest and I have a vested interest," but rather for the community's sake.

Members of the Native community have lost touch with their traditional ways and have been in limbo for years, especially concerning governing their own affairs. What we're trying to do is re-introduce that ability: to give them tools they can work with. Mediation is a process that we know the Native community has been using and continues to use. But they feel that a training mechanism needs to be put in place so that they can actually follow through with their plans.

Comment **Member of Audience.** I went to a mediation workshop that was totally removed from Native people. When you look at mediation, and who comes into conflict with the law or the community, they're aboriginal people. How is mediation going to be accepted in the Native community? How is it going to be accepted in the urban centres for Native people? How do you deal with non-Native people who are so angry that their first thought is, "Shove them in jail and throw away the key. I don't even want to see them ever again."?

Response **Marg Huber.** We're generally finding in this field that people are not aware of the concepts and we have to be flexible when developing mediation models. It's a real learning process on the part of white people as well as Native people to try out these models.

Within many Native communities, people rely on methods that don't empower them. Part of our challenge is to show people that they have options for resolving their disputes and conflicts. Both parties need to see value in working it out together. In many instances, that is possible. If people don't, and they want to have their day in court, then this process is not going to work. So we're in our adolescence in this field and we have a long, long way to go to educate people. There are real opportunities to do so in urban areas.

Comment **Cliff White.** There's a lot of excitement about the growth of mediation as a way to deal with particular situations. We have had many invitations to share information at conferences but we need to get assistance from the Native community. There needs to be work towards developing a "mediation model" for the Northwest Coast people in the big house and the clan system.

When you look at the mediation model outline, you'll find that it is very much community-oriented. This emphasis came from work that we're doing with urban Native Indian groups. Urban people have tended to adopt the community model rather than the long house model—not because they weren't interested in the long house, but because the long house has more regalia, more ceremony, more preparatory work that needs to be done before you actually address the conflict. Even quoting the long house history is an intricate process. So, it was much easier to incorporate Native spirituality when addressing the interests of the community, the victim, and the offender. A major concern is how the issue affects the community. Some community members might think that an offender should be thrown in jail for so many years. This belief has to be part of a more holistic point of view that includes the development of the individual and the community. What we are hearing very clearly from the

Native community is: "We don't want to deal with one issue in isolation from other issues."

Comment **Member of Audience**. When lawyers become involved in attempting to resolve conflicts, and people start talking about their constitutional rights, you then open the door to all kinds of problems. One of my concerns is that, when alternatives to the court system are used, the two parties often agree to waive certain rights. This is all very nice, except we should look at what rights they're waiving. The Canadian *Charter of Rights* is beginning to be the equivalent of the American *Constitution*. Constitutional rights do not take precedence over aboriginal rights under Section 35. So, conceivably an aboriginal group could come up with their own aboriginal charter of rights that conflicts with the Canadian or Quebec *Charter of Rights*.

My point is that, when people agree to waive the court process and enter into mediation, they should know what they are waiving. Right now, where I come from, aboriginal people wear both hats. They enjoy the protection of several charters of constitutional rights.

I was also wondering how mediation resolves a dispute in which the state has an interest—disputes with aboriginal people over hunting and fishing rights, for example. Does your model cover these situations?

Response **Marg Huber**. Let me address your first question about waiving rights to a formal process. Mediation is an informal process that does not limit your access to a formal process should your agreement not hold up. It provides an *opportunity* to reach a decision based on your own needs. If both parties wish, the agreement can be turned into a legal document. But we always suggest that, in mediation, if it's important to protect legal rights, people should obtain legal advice from their lawyers before signing a document. The legal protections are there and are not given up in the mediation process.

So, you do not forfeit your legal rights in mediation. Often, they're not necessary because parties are comfortable with the decision they have reached; they're fair to them. A court may have ruled otherwise. In some instances, people may need to consult legal counsel prior to entering into the mediation process, but, in most mediation agreements, no lawyers are involved. And there's ample opportunity for anyone with a vested interest in the issue to sit at the table and be part of the decisionmaking process.

Question **Member of Audience**. How do you mediate something like a rape, child abuse, sexual abuse, or murder? What do you do in situations where the people involved say: "So and so was raped and the two families have agreed that the two parties should enter into mediation." Now the state has a definite interest in this type of situation. It's something of a very public nature and, in most legal systems, if the individual doesn't prosecute, the state can initiate criminal prosecution. How does mediation deal with something like that?

Response **Marg Huber**. Mediation is not a suitable process in every situation. In cases of rape, domestic violence, and other serious crimes, careful screening has to take place. It is possible to do work up front to determine if mediation is going to be appropriate. There must be a proper balance between the two parties. The mediator's role is to maintain the balance of power.

Question **Member of Audience**. Where do you draw the line between the state and justice mechanisms that might be operating in the community? I'd be interested to have someone from the Native community comment, someone who can talk about how various community institutions work and how issues are handled in a traditional manner.

Response **Cliff White**. In more serious offences, negotiations between houses were common. There was an attempt to make sure that all issues were dealt with before coming to the potlatch—where everything becomes public. Apologies were made in public. Everything was made public according to the agreement that had been arranged.

Comment **Marg Huber**. We have a mediator who facilitates understanding and is impartial. This person provides a structure within which negotiations can occur. The structure includes an agenda, formed early in the process and relevant to the issues under negotiation. The negotiation sessions are about two hours in length. The mediator also acts to control the "temperature" and climate between the two parties: emotions can be managed in such a way that they do not hinder the mediation process.

It is important to develop the mediation model within the framework of community values. People felt that mediation should provide an opportunity for personal and spiritual growth and reconnection with the culture. Mediation, as such, wasn't necessarily about two individuals involved in a dispute; instead, it was about two people interacting in a broader context who have an opportunity within that broader context to heal a dispute—and to do so in a way that would enhance their lives and the community. This process would involve more people at the table: people who were connected with and would support that individual, possibly family, elders, or community members who were interested in the issue.

Another essential criterion was that the mediation process had to include spirituality. (The programs that are working well within the Native community include a strong element of spirituality. We used that criterion as a guiding principle.) It was also important to include two mediators to balance for gender and possibly for culture (in intercultural situations). Two mediators seemed a much more appropriate way of managing conflicts.

Several other points are important. We needed to address issues of personal safety when developing a process that helps people feel comfortable talking about conflicting views. This point seemed to be even more important to Native people than for white people. Spiritual rituals are used to begin the mediation process. Involving the elders and establishing an appropriate setting and seating arrangements were also critical to the discussions. Finally, mediation had to be made much less time-bound, must not be intrusive, and must be safeguarded against interruptions. The process must be visual, using symbols, images, metaphors, and examples that connect people to their culture.

Comment **Cliff White**. It's very important with the Native community in particular, to make sure that the atmosphere allows for positive communication. The parties to the conflict must be able to discuss things very openly and honestly, explaining what the real situation is. But the discussions must take place so that people can leave and still be able to work together after the mediation process.

While non-Natives may do mediation within a two-hour time frame, Native people may require much longer. The potlatch, for example, went on for days. We need to bring the offender and the victim together—deal with them as a whole—so that they will be able to heal. If they are kept separate from each other, you may have dealt with the issue in a judicial way, but they have not had the opportunity to heal: they're broken and in a very negative state.

Some of the symbols we use include pocket sticks, peace pipes, feathers, or even a stone—things that can be held in the hand, so that the participants can ground themselves spiritually. Native people feel that there's life in all things, including the stone you may have in your hand. There's energy holding that thing together.

Comment **Member of Audience**. You might have a situation where somebody borrowed somebody's boat and damaged it. Then they have to resolve the dispute over blame. You seem to be implying a kind of victim-offender reconciliation process. However, mediation and victim-offender reconciliation are two quite different things. Your model of mediation appears to be one of very general applicability.

Response **Cliff White**. The notion of accepting responsibility is very important. Our jails are full of people who are not taking responsibility for being there. Nor is there any effort in the community to force them to take responsibility when they get out.

In the Native community, the offender can be held responsible even though that individual may not have taken responsibility. For example, the offender's "house" is responsible for teaching him or her better ways to live in the community. In our current system of justice, no one is held responsible when criminals decide that they are not responsible for their offences. The "house" could represent the offender in a mediation process with the victim. They may not feel that the issue should come to court. That's a key part of negotiating how the issue is going to be dealt with.

Comment **Member of Audience**. We are so ignorant of each other. Native law and Native values are so different from white laws and white values. I can see where it would be very threatening to other people within the judicial process if the Native community began to use mediation. What would be the role of lawyers, judges, and Crown prosecutors? There must be an educational process for mutual understanding between the cultures.

Comment **Marg Huber**. In our project, we are trying to provide a visual and a spiritual map in the mediation process—a new way of conceptualizing the process. We use the medicine wheel because the image seems to fit well in many ways: it helped us view the process as holistic and allowed us to think about a circular process rather than a linear-sequential process. We needed to make a positive metaphor of "mediation as a journey."

So the metaphor of a journey of mediation can be presented as parallel to the journey through life. The parts of a person as they are formed on the medicine wheel include the spiritual, emotional, physical, and intellectual qualities. We can begin to address the wholeness of a person and to consider a whole process rather than simply an intellectual process.

We use a spiritual symbol as a way of helping people to feel safer. Safety, as mentioned, is a key issue for Native people: they can feel a sense of personal safety in the mediation process by feeling respected, having a higher level of trust, and subduing some of their stronger emotions.

Comment

Cliff White. Then there's the challenge of encouraging the people to get much more emotionally involved but not to get too carried away. Enough time is provided for people to share their emotions with everyone. Take a funeral, for instance. The long house tradition provided an opportunity for people to smile, laugh, have fun, and enjoy life because funerals aren't necessarily a bleak thing. It's passing on from one realm into another. The entertainments provided are uplifting as well as very serious.

So mediation is not just looking at particular situations: it also cares for the emotions of the individual and creates conditions under which people can say what they feel. It's a time for communication, for discovering what is important to both sides. Laying it out on the table. Giving feedback to make sure that the issues are heard on both sides of the table. You don't stop that process until people have been able to say their piece.

We're looking for the solutions when we use the mediation model, solutions that would be amenable to both sides. It works in the Native community by running through a circular motion: the speaker is in charge of the topic stick; everybody is given ample opportunity to go through the issues; everybody is heard. This process may take a couple of days. However long it takes for the situation to be dealt with, that's how long it takes. Be prepared for that kind of a situation.

Comment **Marg Huber**. The focus isn't necessarily intellectual. The issues are delineated in free form. The process offers an opportunity for people to engage in a much more emotional way. The focus comes from the emotions, not the intellect, and that's a real shift from the more formalized structures for conflict resolution. And it's possible because the mediation is done in a spiritual context.

Question **Member of Audience**. How do two people get involved in the mediation process?

Response **Cliff White**. You would already know within your very close-knit community who to contact. I would go to my privy council, advisors, or elders, and say, "Here's what mediation can deal with. Here's what's happening. Do I need to deal with this situation?" Perhaps, we will deal with it ourselves. Or it may get transferred over to another group. Usually, a person is in charge of the house and you usually pay formal fees to them for initiating the mediation process.

Question **Member of Audience**. What potential is there for a white person? I work in Labrador in a predominantly Inuit community. There I act as a mediator on preventative measures for young offenders, although I do not work directly with young offenders as a professional. What potential is there for me to bring such a model back? To say to that community, "The model we presently have doesn't seem to work." Because that's always been my thought. Can I or do I have the right? Who am I to say we need a Native model for mediation? Or to have a say in how it would be implemented? I'm interested in the Native perspective on that. How that would be perceived.

Response **Member of Audience**. I would like to respond to that. I went through that exact thing. I attended the Northern Conference in Whitehorse and then returned to Barrow where I started various meetings. Every month or so, the justice system people get together. I had a talk with them, and then we had a women's conference and I mentioned my concern there. I just kind of dropped it here and there, and that was it. I didn't do anything else. Finally, one day, the call came. It took a year-and-a-half, but a call came back to me. It was the city of Barrow calling. A petition had been presented to them. Many people in the Native community had CB's [citizen band radios] and, because of all the talking on the CB's, the airwaves were jammed.

They talked about resolving this new issue through mediation. So they called me up and I talked to the mayor and he talked to the council. But then the city decided that they wouldn't go ahead with the process unless the community was interested. So we had a couple of community meetings. I had a slideshow from a tribal program in Washington State. We showed that and more enthusiasm was generated. A small group gathered, some money was available, and we got the trainers up. Then we started. And so, to answer your question, the only thing you can do is to start dropping seeds. Hopefully, the community will come back with a response. It may take awhile.

Comment **Member of Audience**. The mediation process has been in Native communities for a long time. It's a matter of stoking the coals. The embers are there. It is also a matter of stoking the coals in non-aboriginal communities or large, urban communities. It's a matter of rubbing sticks together and lighting the fire. One thing we, as non-aboriginals, need to say to ourselves is: Native people hold their people much more accountable to their cultural traditions than do white people. The message for us is "prove yourself." Then we can ask about working together with Native people.

But we also have to prove ourselves in our own heritage, in our own way, because that's another part of the message. They're getting back into their traditions. How about we get back to our roots as well—rediscovering, practising, and proving ourselves as people they can work with?

One further issue is how can the mediation model be applied to urban aboriginals? Mediation for restoring justice involves the community. You mentioned this several times. I would think this point should be emphasized even more. But, in an urban setting, there is no community. There may be a ghetto that has some elements of community but few positive qualities. So much of the mediation in aboriginal communities depends on a sense of "peoplehood" and collectivity. That is lacking in an urban setting. So, how are you going to do this for urban aboriginals?

Response **Cliff White**. Through Native organizations. In the end, actually, there is a possibility for us, both Native and non-Native, to learn from each other. Each one of us is doing our own thing. Here at this conference, we are sharing what we have. It is important to bring together both the Native and non-Native communities to make sure that this is understood on both sides, because the learning is happening on both sides.

RESOURCE READING

Lantz, Angela, Dean Peachey, and Michael I. Jeffrey. 1990. "Mediation in Northern Communities: Promises and Pitfalls." in C.T. Griffiths, ed. *Preventing and Responding to Northern Crime*. Burnaby, BC: The Northern Justice Society, Simon Fraser University. 81–88.

17

MAXIMIZING COMMUNITY INVOLVEMENT IN THE YOUTH JUSTICE SYSTEM

Whatever happens, I just want to get out of the way. I don't want to be in the way. I want to let the people know that if they want to do something, all they have do is let me know. If it is legally possible for me to work it in, bend this, twist that, and work it in somewhere, I will be glad to do it. I think my job is to get out of the way.

Judge Claude Fafard, Provincial Court of Saskatchewan

RESOURCE PERSONS

His Honour Judge Claude R. Fafard, Provincial Court of Saskatchewan, La Ronge, Saskatchewan

Lynne Mourot, Regional Young Offender Manager, Prince Albert, Saskatchewan

Bill Watson, Director, Creighton Youth Residence, Creighton, Saskatchewan

This workshop examines several innovative projects in Saskatchewan that maximize community involvement in addressing the needs of youth in conflict with the law. These projects include community members as service providers involved in a variety of activities, including supervising young people and residents as members of sentencing advisory committees and providing recommendations to the provincial court.

INTRODUCTORY REMARKS

Lynne Mourot

In writings and discussions about the need for a balanced approach to young offenders, there are three parts of a triangle that are most commonly mentioned and which need to be balanced: the protection of society; the accountability of youth for their behaviour; and the need of the youth. In responding to young offenders, both in the youth court and in developing programmatic alternatives, these have been the primary guiding criteria. However, there has been a piece missing: the family and the community of the youth.

Communities want and need to accept the responsibility for their youth and their people. For too long, the police, the courts, and social services have taken the responsibility for and tried to solve the problems of youth. Quite often these attempts have been undertaken in isolation from the community, the youth's family, and the young person. To address these deficiencies, in Saskatchewan we have been moving toward involving communities to a much greater extent than in the past. Native youth are over-represented in the justice system and we need to find ways to address their needs and to work with them within their own cultural context.

The approaches we are taking and the programs we are developing are all designed to give ownership and responsibility back to the community and to support communities as they develop their own programs. Reaching out and involving communities is hard work. It takes more time than eight-to-five or eight hours per day. It is particularly difficult when you fly into communities and don't live in those communities. But the pay-off is worth it. The success that comes from these programs builds enthusiasm to work even harder. It certainly builds self-esteem in the community members and in our youth. This has been lacking and is one thing that we need to work toward. We are fortunate to have Judge Fafard in northern Saskatchewan. He is very enlightened and compassionate and is willing to listen to new ideas and to seek new solutions to old problems.

Judge Claude Fafard
I fly throughout the north of the province of Saskatchewan. My whole circuit is a flying circuit. I've been doing it for over sixteen years. Very often, I fly home at the end of the day, thinking, "What the hell am I doing here? Why are we here? Why did I go there today? What have I accomplished?" I would very often wish that I had not gone there or that I wasn't supposed to go there. Sometimes I have had the feeling that, if our system hadn't been there, the problems that we are supposed to have dealt with that day would have been dealt with anyway. Perhaps, those solutions would have been more permanent than the ones that I tried to impose.

Over the years, a dependency on the system has developed. It's not surprising that this would happen. You make it against the law for a people to practise their religion and their beliefs—the sun dance, the sweat lodge, the ceremonial pipe, all these things. You gather up the kids, put them in residential schools, and forbid them to speak their language. When you do these things as a government—as a governing society over a period of time—the people who are on the receiving end of these blows are bound to start feeling that their culture has no validity. They start feeling that the spiritual beliefs they held, their way of looking at the universe and god, if you will, must be invalid. Because here are all these smart people with all this technology telling them it is no good. I suspect that, over time, the people began to feel that they had to abandon their culture. The harm that has been done goes very deep and it will take a long time to restore the people's self-confidence in their culture and in their traditional beliefs.

Let's assume that we have now recognized the harm that's been done. It's very difficult to undo harm and to allow people an opportunity to regain confidence in their culture and in their language. The danger for a person like me, or any other person who is involved in the delivery of services, is that we are going to come along, and say, "Oh, we made a mistake. We are going to fix that now. Here's the answer. We will do this now." I'm very leery about doing that.

THE SENTENCING ADVISORY COMMITTEE

The idea for a sentencing advisory committee came from my efforts to create a mechanism to get some community input. As a provincial court judge, I don't sit with a jury. I have no authority under the *Criminal Code* to have a jury of people with me to help me to decide the facts. However, I can get advice from the community after the verdict has been reached in a case. If a person is found guilty, many opportunities to consult with the community are available.

In putting together the pre-sentence report, for example, the probation officer will go out and speak to those involved in the case, the victim, and to the relatives of the offender. However, the pre-sentence report doesn't give you the wisdom of the elders and others who live in the community—those who may know the offender and the victim—but who are not directly involved in the case. So there was a need for some mechanism to involve them.

I began in Sandy Bay because I have some close friends there. We had coffee during an adjournment and we discussed the possibilities. I discussed the ideas with another provincial court judge and he was very favourable. I then planted the idea with the community that, if they wanted to have input into the court process, they should formalize it. I suggested that the village council should ider[illegible] people to be on a sentencing advisory committee. Selecting seven or eight people would ensure that there would always be enough members of the community available to participate.

The first case involved five young girls between the ages of fifteen and sixteen. They were charged under the *Young Offenders Act* with committing mischief and vandalism by spray painting the walls of the local arena. Because the community had raised the money for the arena, this facility was very important. The people in the community were rather unhappy with what these girls had done.

I requested that this matter be referred to the Sentencing Advisory Committee. The youth worker outlined the facts that had been presented in youth court. The committee met with the young women, spoke with them about their responsibilities, and informed them what they were going to recommend to the judge.

The recommendation of the committee came back to the court as an attachment to the pre-disposition report that was filed by the youth court-worker. The recommendation of the Sentencing Advisory Committee was that the offenders were to do a number of hours of community service work at the arena and attend a summer camp near Sandy Bay for alcohol and drug abuse treatment. It all went very well. The recommendations from the committee were very reasonable and were included in the probation orders that were issued by the court.

I didn't want to have a government representative going to the communities to say what a great idea the Sentencing Advisory Committee was. Instead, I thought that the experience of Sandy Bay would spread by word-of-mouth. Sentencing advisory committees are now in place in three communities.

An initiative underway in Yukon may result in cases not even going through the plea stage. The police will take the occurrence report to the local committee, and say, "Here is what we have. We have investigated and here is what happened. Do you people want to handle it?" They are going to try to bypass the whole court system and have the committee decide. This committee is not for sentence advising but is a local committee of advisors on justice matters.

I have never yet had reason not to follow the advice of the Sentencing Advisory Committee. They are eminently reasonable. Their advice is incorporated into the probation order. The youth worker is then involved and continues as a liaison between the Committee and the youth. The Sentencing Advisory Committee members who live in these small communities will be aware if the youth gets into additional trouble. They can inform the youth worker and, if necessary, have the person charged with a breach of the probation order.

One of the positive aspects of the process is the meeting that takes place between the Sentencing Advisory Committee and the offender. There may be some recriminations but there is also advice coming from the people within the community. This practice is preferable to advice being given by some guy that flies in and then leaves again. Why should offenders care how I feel about anything or if I am offended? But if they have the impression that they have offended other community members, and that the elders and others on the committee are unhappy with their behaviour, that's a far greater sanction than many of the sanctions I can use as a judge.

Comment **Member of Audience.** There is an alternative measures program operating in Yellowknife, Northwest Territories. It is a diversion program and deals primarily with first offenders. When young people are caught by the RCMP, a report is prepared and sent to the Crown counsel. The Crown gives it to the alternative measures committee that looks after the youth. There is no criminal record. For two years, there is a summary conviction, but the youth is saved from any involvement with the court. The youth has to plead guilty to the charge before he or she comes to this committee. The youth and a parent are then asked to appear and the youth is questioned.

Comment **Member of Audience.** In the community in the Northwest Territories where I work, there is a local justice committee comprised of seven members. We get referrals from the RCMP which have to be approved by the Crown. The committee brings the victim and the offender together and then we come to an agreement so that the offender can make right what he has done wrong. It works well, although it takes supervision and patience.

Comment **Member of Audience.** In Saskatchewan, we have been using alternative measures as a pre-court option. It's better than laying charges and then adjourning while they work out alternative measures through a committee or through an individual. One way we have been able to sell the idea to some RCMP is that it reduces their paperwork. (One of our judges has stated that the pulp mills exist primarily to fill the paper requirements of the *Young Offenders Act*). If the RCMP don't lay a charge and instead hand the Occurrence Report over to a committee, they don't have to do any paperwork. For some of the detachments that has been the selling factor for pre-court diversion programs. With other detachments, we haven't been that successful.

It is a hard sell with the police. In some areas in Saskatchewan, we visit RCMP detachments every couple of months and sit down and talk about alternative measures. In some communities, we are going to have a good reception. We are going to have detachments that say, "Yes, we are going to do this. Let's try this." In others, persuasion is going to be very hard.

Comment **Member of Audience.** It also depends on the lawyers saying, "Your Honour, I think this case should go to alternative measures." It depends on the judges, those who are willing to say, "This case shouldn't be in front of me in the first place." Judge Fafard has made the observation that we have stolen conflict from the communities. Whether it is the police or social worker or the courts, we take the conflicts that belong in the communities and we make them our business. We are fortunate that Judge Fafard is very willing to say, "This should not have come before me," and allows the communities to take these matters back.

Comment **Member of Audience.** The key to the success of local justice structures is that people are accountable to their own community and their own people as opposed to a very impersonal court system, social workers, probation officers, and lawyers who come in once a month and then leave. It's much more difficult for a person to sit down and talk to the victim or talk to people from their own community than it is to come to court. Court has lost its threat value.

Comment **Judge Fafard.** There's a lot of pressure from society to incarcerate people. Whether you're talking in a restaurant or meeting with some friends, they'll tell you that it's a big joy-ride going to jail: the offender has a fancy "motel" to live in for a few weeks or months.

For me and others who have been working within the criminal justice system for a long time, we naturally think that we own the system and we naturally tend to defend it. My thinking is fairly muddled. I can't stand up here really and say, "Let's throw this all out. It's no good." It's not clear in my mind yet. I'm not sure that we should start all over again and create a whole new system. I'm a tinkerer. I don't know which way it is going to go. But I tinker with what I have for now, and that is all I know how to do. But it is clear that the present system is not working very well.

Comment **Member of Audience**. The reason the criminal justice system is not working is that the people are not being allowed to participate. The community as a potential resource is not acknowledged. Community members may not have certificates or degrees, but there is a great deal of collective experience and expertise in the community.

Comment **Lynne Mourot**. I agree with you that it is not necessary for people to have degrees or training. Part of the problem is that, in giving power back to the community, we expect community members to work on a volunteer basis. Some of the initiatives in Saskatchewan include provision for paying people in communities. These people are doing what social workers would do. The fact that the person is a member of the community and has some life experience, the fact that they are committed to doing something with young people, is enough.

Comment **Judge Fafard**. They are doing some things in Manitoba that we should be doing in Saskatchewan as well. In some small communities in north Saskatchewan, many people in the community are sick. They are spiritually sick. There are problems of alcohol. There are problems of abuse. And there are many people who are suffering from culture shock. Their economy—the hunting, trapping, and gathering way of life—is in tatters.

Let me use the community of Pelican Narrows as an example. It would be difficult to go in there and find people who would be able to make a good decision and give good advice. But, if the community wanted to do that, I think the community should have the right to try. They are not going to mess up any worse than I have or we have.

I suspect that there are many people involved in justice in Regina, our capital city, who do not know what we are doing. In fact, when they did find out what we were doing, the shit hit the fan for a little bit. They were wondering, "What is he doing up there? What is going on over there?" But it was all very legal and nobody could do anything about it. We weren't asking for money from anybody, although there are problems with that because we are having a difficult time finding people to supervise community service work.

Comment **Lynne Mourot**. A major difference with the community advisory committees is that we've said, "This is your committee. Take it. You decide on the members, where you are going, and what the dispositions are going be." We don't appoint anybody to the committees. The court doesn't appoint anybody. We have just said, "Go for it."

THE INTENSIVE INTERVENTION PROGRAM

Lynne Mourot

There are additional programs that have really involved community members helping youth. One of these programs is the Intensive Intervention Program. This service looks at contracting with local people on reserves and small and larger communities to assist youth to complete their dispositions. In some cases, they will facilitate alternative measures such as mediation agreements where there are no committees. The program is designed to give the court increased options for appropriate sentencing. And also consider dispositions that provide supervision and assistance without the youth having to go into custody. Our approach is that youth should go into custody only as a last resort. There are many cases where Judge Fafard said society thinks that this person should be locked up. Sometimes that means we have to stand up in court at the last minute and say, "Your Honour, we have this nice program that provides extra support, structure, and supervision for a youth." This way we can provide a range of controls within the community.

We have recognized that not everyone can be a volunteer. It is nice if you can get people to volunteer, but it is also nice that people get recognized financially for some of the things they do. So we contract with them on a fee-for-service. Depending on the service we ask them to provide, we pay according to the service or task and the amount of time it takes.

We might ask them to do a number of tasks ranging from negotiating an alternatives measures or mediation agreement to seeing that a young person gets to alcohol assessment and treatment appointments. We might ask local people to monitor the curfew of a youth who has had problems and is on the verge of going into custody. We might ask them to involve the youth in some recreational or extracurricular activities. Perhaps, help the youth get to school by picking him up every morning and taking him there. Or take a youth to mental health appointments. We might ask them to work one-on-one with the young person on life skills or anger management. We might ask them or contract with them to help a young person write a résumé, go for an interview, find a job, or locate a place to live. To run interference and negotiate with social services to get financial assistance. We negotiate with local people to do some cultural activities with youth. We can also contract with a community resident to assist a youth in completing a Community Service Order. The sky's the limit.

We use a fairly tight contract that outlines what we expect the person to do and what he or she will be paid. The expectations are clearly stated so that both the service provider and the youth know what the service provider will help the young person do.

These are local people. They don't need a degree or any kind of training. Although we will offer some orientation and training for the position, we are really looking for people who are interested in youth, live in the community, and have some skills in getting along with kids and relating to kids. The service providers are also involved in alternative measures programs such as mediation. All of the youth also have a probation officer, but the probation officer may live in a community 150 or 200 miles away.

Elements other than supervision are needed to assist and support the young person. Often, when we go to the community, we go to the elders and other respected people in the community, and say, "Who can do this?" They can point out people who have very good skills in working with youth. One point that we also need to mention is that you need an enlightened judge who is willing to take some risks. Many of these kids are on the verge of going to custody. Many have already been in custody. We're trying to find ways to keep them out. But there are times when we don't succeed.

Early in our experience with intensive supervision, a youth in La Ronge was put on probation with intensive supervision. Somebody worked with him on a regular basis. In the first week, the youth went to the bar, stabbed the bouncer, and ended up in the adult system—because, in the meantime, he had turned eighteen. I talked to Judge Fafard and said, "I hope this doesn't mean the end of intensive supervision." We then got into a discussion about having to take calculated risks. The fact is that such incidents shouldn't put a whole program in jeopardy. There are problems in all programs. Just because something bad happens doesn't mean that the program should end.

I know of other communities where, if that had happened, the judge would have been unwilling to look at intensive supervision for a long time. So, you need cooperation within the whole system and you need people who are willing to take calculated risks.

A key to the success of the Intensive Supervision Program is that someone from the youth's community cares. When they do a curfew check, they just don't knock on the door and say, "Are you home? Can I see the whites of your eyes?" And then go away. If the service provider is from the community, he or she may sit down and have tea or coffee. Perhaps, talk to the youth and parents, find out how things have been going. Because the service provider lives in that community, he or she drops in as a neighbour. Checking the curfew is only a small portion of the role. Mostly, a service provider spends time with the kid.

Comment **Rudy Klaassen, Saskatchewan Social Services.** You don't know how fortunate you are having all these volunteers. I tried for years to find volunteers. I could never really find people who were willing to help kids complete their community service. They were telling us that we always expected them to do things for nothing: "You people get paid, but you expect us to do what you should do, but for nothing." Of course we couldn't do all the work that was expected in terms of supervising community service because we have a large area to cover.

Lynne and I went to one of the reserves to try to sell them on the idea of supervising children. We would pay them. And they said "No. We want you people to hire somebody on a full-time basis to do this on our reserve." Of course, we weren't able to do that.

This situation was in limbo until one day I thought of the chief's wife. So I went to the chief and asked if it would be all right if we contracted with his wife to supervise some kids. And he said, "You are going to have to ask her." So I asked her and she said, "Yes." That's how we got our foot in the door. We then contracted with her and the arrangement seemed to work out okay.

One problem we have had in the smaller communities is that many people don't want to be seen to be in a position of authority. If kids don't show up to do their work for the community, then they would have to report back to us. It has been very difficult for us to find people who are willing to work in that capacity, even on a paid basis. But we have found a number of them and in some communities we have had successes, especially in larger communities.

In Buffalo Narrows, we have a woman who is doing good work for us. The problem with the contract is the amount of paperwork involved. People who ordinarily might be good supervisors for the kids don't want to be bothered with the paper. If they don't do the paperwork, they don't get paid. It becomes a vicious circle.

We have been able to keep kids out of custody because intensive supervision was ordered as a condition of their probation. Many of the youth seem to respond really well to local supervision. There are those youth, of course, who would rather not have this. Basically, the approach has worked well for us.

Comment

Judge Fafard. We don't have the turnover now in the social and justice services in northern Saskatchewan that we had ten or fifteen years ago. The first few years I was in La Ronge, it seemed as if the people who came there wouldn't stay more than two years. They seemed to take their cue from the RCMP, which transfers people out every two years. The social workers and lawyers would come up. Then they would be gone. In La Ronge now, many lawyers have been there for ten years and they know their clients' first names. There are more social workers. The attitude toward recruiting local people is much better. While writing skills are of concern, some of the local people write the best pre-sentence reports I've ever seen. They don't have university degrees. I don't even know if they have grade twelve. But they've learned on the job.

Question

Member of Audience. Can you coerce people into counselling relationships such as you are describing under the *Young Offenders Act*?

Response

Judge Fafard. It depends what you are ordering. You can't order psychiatric treatment for a youth or even psychological counselling if you haven't had a report from a psychiatrist or a psychologist saying that is what is required. But counselling by a youth worker, elder, or some other person is different. There is a contract that is signed by the young person, the parents, the service provider, and the youth worker. So there has to be agreement of all of the parties.

It appears that the Court of Appeal in Saskatchewan is going to be more innovative under the *Young Offenders Act*. I'll give you an example of flexibility. We had a young girl in Brabrant Lake who was offending over and over again, particularly with respect to a store owner who was probably the most despised person in the whole area. I don't know what he does or why people feel that way about him, but I know the police are keeping a very close eye on that man. This girl is functioning at a fairly low level of intelligence. She decided that she was going to be the person who will run this guy out of town.

She was always in conflict with him, throwing things at his store, going in there, starting trouble, and fighting. We had a psychiatric report done. She would breach her probation and she had been in custody. When she was in the hospital in Prince Albert for a psychiatric report, she got so far out-of-hand that they had to take her forcibly from there to the women's prison at Pine Grove. On the way over, she broke the windows in the car.

I knew a medicine man from southern Saskatchewan where the reserves still have much of their Native culture and spirituality. So I decided to have him see the girl. She speaks better Cree than English anyway. Why not see if he can talk to her and let me know what I should do. But I couldn't get money from anybody to pay this man. He deserved something for working with this person. He was going to have to travel up from Saskatoon to Prince Albert to visit her at Pine Grove. Finally, the local La Ronge agreed to give us $400 to pay his bills. So the medicine man went up to Saskatoon. He talked to her a number of times. He also wrote up a report as the chief of the band had stipulated.

That was ten months ago. I haven't seen her back in court since. I don't know what that medicine man said to her. She told him things that I think she had never told anybody else. He included some in the report. I haven't seen that girl since in court or in conflict with the law. I've inquired and she has settled down. She is no longer going to take the world on her shoulders.

I don't know what would have happened if this had hit the media: "What is this judge doing? He is sending people to medicine men." There are many people out there who probably don't believe in doing this. But I do. It's as good as anything I know.

Comment **Member of Audience.** I have some concerns about coercing youth to participate in the Intensive Supervision Program. I have a concern about protecting the legal rights of the youth.

Response **Bill Watson.** I run an open-custody young offenders facility in northern Saskatchewan. Those things don't happen. When they come into the centre, they have a say in the case management process. It is their plan as well as ours.

Comment **Judge Fafard.** The youth workers are spread too thin. They just don't have time to do the one-on-one counselling that a judge naively envisages—that the youth is going to get a regular weekly meeting with the youth worker and be counselled. It really doesn't happen very often. It is just not possible.

Comment **Lynne Mourot.** That is why we look to community members and that is why we have programs like the Intensive Supervision Program. Then the youth worker becomes the case manager and sits down with the youth and whoever else might be involved. They determine the issues and needs in the kid's life and who can best meet those needs. The youth workers become the brokers rather than the person who is expected to provide all of the services. Because they can't be all things to all people.

THE COMMUNITY HOME PROGRAM

Lynne Mourot

Saskatchewan Social Services also operates a Community Homes Program which uses families in communities designated as open-custody facilities. We also operate a number of day programs. Young people who get custody dispositions in the youth court can be sent to these homes rather than a detention facility.

These homes are in or close to the youth's community. A home provides the supervision, the discipline, the control, and all the things the youth needs. At the same time, we make use of community facilities so that the youth can continue in the same school or get some job training. Also, we do some work with the families of the young people to help them develop additional parenting skills. Sometimes, the fact that kids are now living in a home with some supervision is all that is needed to provide society with the necessary protection from illegal behaviour.

The people who operate community homes are recruited in the same way as service providers. We go to the community to ask key people, including the elders, the band council, and others in the community who have credibility, who might be able to work with young people. We are looking for families who are willing to take youth into their homes. They must provide guidance and assistance as well as supervision because these young people are in custody. When Judge Fafard sentences somebody to custody, he expects that there is going to be supervision and control. (If they go to a custody facility, they may have that. But we have kids who run away from custody facilities as well.) So we're asking families to exert a fair amount of control. Sometimes, it is very difficult to find people who are willing to be that kind of authority figure. At other times, people are willing to take on that role so that young people can stay in their home community, be exposed to their own culture, close to their own families, and continue to participate in those legal activities they previously engaged in.

We are prepared to pay people more than the standard foster home rate. At this point, the program is fairly new. We have been able to recruit thirty-five families. (Half of those families are aboriginal families. About a quarter are in communities right on the reserves. Half are in the northern part of the province.) Each community home will take no more than two young persons so that enough time can be spent with them.

With foster homes, the past tendency has been to reward the good foster family with more work. So, if you have a foster family that is doing a good job with two kids, you put in another couple, and then you put in another couple, and all of a sudden the roof caves in, and you wonder why. We made the very conscious decision with our open-custody homes program of no more than two young persons per home. The youth often have many problems and need people to talk with them. They need people to listen to them. They don't need to have seven or eight other kids competing for the same kind of attention with the same kind of needs.

We have made a commitment to orientation and training for the community home parents. Three times per year, we bring these people together to share ideas, and to learn from each other and from the resource people that we bring in. This training covers a number of areas—from adolescent development to cultural awareness. It also provides an opportunity for the community home parents to develop a support group.

No more than two kids per home and no more than ten homes per worker. Despite the cutbacks in financing, we have been able to stick to that principle. We have also been able to pay the house parents so that we're not asking them to do something for nothing. We are looking for stability and for role models for the kids. We are looking for people with backgrounds that can provide for the special needs of young people. Again, we are not looking for people with degrees or any kind of special training. We are looking for a more innate kind of caring. We also look to these people to provide mutual support for each other.

Our community homes program has been highly successful. Kids there seem to do better than they do in facilities. We shouldn't be surprised about that. The recidivism rate is lower for youth who live in these kinds of homes. The interesting thing is that many don't want to go home at the end of their disposition. They've become accepted as a part of that family and seem to be doing well. If they are in a home in an adjacent community rather than in their own community, this reluctance is particularly apparent. Sometimes they are just not ready to go home.

To help them make the transition back to their home community and family, we emphasize temporary releases, that is, short-term visits to their family and home communities. We don't wait until the release days, dump them out the door, and say, "Now, go home." There is support for the youth going home for one or three days. Then the youth worker and community home operator can discuss how things went on the release. What were the issues? How can we help to make things different when the youth goes home?

Another part of the *Young Offenders Act* is the fact that dispositions can be reviewed by the court. If a secure-custody disposition has been given to a youth, and the youth makes some progress, or we happen to come up with a community home in their community, we can then go back to the court. We can ask the judge to review that disposition and to change it from secure to open custody. That helps the young person go into the community home. At the point where the young person has made sufficient progress in a community home or in an open-custody facility, we can go again go to the court and ask the judge to review the disposition and release the youth on probation.

We do that as well when providing ongoing support. If a youth goes home on probation, a youth worker provides support. We can also can use the Intensive Supervision Program to provide support, using someone in the youth's home community and trying to tie the programs together.

THE MOSQUITO RESERVE PROGRAM

Rudy Klaassen

In the winter of 1990, one member of the Mosquito Reserve Band came to my assistant in North Battleford, asking him what could be done: so many young people were getting into trouble on the reserve. So a decision was made to run a project involving a group of young people aged twelve to seventeen. These kids have high needs for supervision and assistance in completing a Community Service Order as well as other tasks. So, they set up a project on the reserve based on a program already operating in North Battleford: the kids cut wood and sold it to pay for restitution and fines, while keeping a portion for their pay.

It was very cold at the beginning of March when the program began. Then it went down to minus thirty. The youth had worked one or two days already. And this one day it was considered too cold to go out to work, so they didn't go out. The next day it was colder but the kids wanted to get to work. So they went out and cut wood. I think it was about minus thirty-five or so. And there they were cutting wood. They just didn't want to wait for things to warm up—they were that eager to get involved in the program.

We find that those young people who go through this kind of a program, especially where some counselling is involved, have a lower rate of re-offending. The program has some very positive effects: the participants become more motivated to live and also have a greater sense of self-worth. They are able to pay off their obligations to society as well by completing their community work.

The program has been highly successful. One reason is that the kids are picked by the people who run the program. Many of the kids are not well supervised by their families; these are the youth who get into trouble. The program works particularly well for these kids. They really respond to the supervision.

RELATIONSHIPS BETWEEN THE COMMUNITY AND THE YOUTH FACILITY

Bill Watson

Most of the kids in the Creighton Youth Facility do not come from the immediate area. My philosophy is that the community is not going to be involved in a facility unless the facility is involved in the community. I think you start out with community service work. The paybacks come later.

We do work for the Parks and Recreation Board all winter long and, in return, we get ice-time at the local area. We also get free use of the swimming pool. We do work on both the Manitoba and Saskatchewan sides of the border. We very often send kids out to work for wages on the Manitoba side.

People in the community see a work crew out and they see who's working and who isn't working on the crew. They'll come and say, "I saw this young fellow and he looked like he was doing quite well on the work crew. I need somebody to help me to build a house." They hire young people and that money goes home with them.

Comment **Member of Audience, Alaska.** One thing I noticed with many kids from the Alaskan villages I deal with is the kids' dreams. When you ask them, "Where do you see yourself in five years? What do you see yourself doing?" There are no dreams. Only learned helplessness and learned hopelessness.

We run a wilderness camp for youth at Indian River that involved the elders. We learned and they learned. We built on their confidence. You give them things to do like beadwork and drumming? I was selling them short. They became really involved in costume-making, moccasin-making and drumming, in cooking and sleeping outside, and in telling or hearing stories. It does their confidence good. It really helps them. They were excited.

Some of the youth don't want to be Native. They are embarrassed or they are just hearing negative things. They don't know where they stand even with the teachers or in a community. When you tell them all the beautiful things they have and some of the traditions they practise at home, it makes them feel really good. We have non-Native kids in our program as well and it really helps to develop a relationship between the Native and non-Native kids. There is no difference. They just mix so well. I sit back and watch it happen. It is really rewarding but you have be on top of it. You are developing their future. It is just wonderful to see, especially in kids that have been in trouble.

Comment **Member of Audience**. I'm from the east bay area of Quebec. We cover eight communities. In the summer months we fish, in the fall we hunt geese. In the winter months, it's caribou and moose; in the spring, geese. This part of the program is within our services. That's one way to reach the youth. It helps them identify who they are. The problem arises when the youth are back in the community, when nothing has changed in the home. Two or three months down the line, there's a relapse. We do bring in the parents two or three times a year when the kids are in the program. We sit down with them and plan programs for their children.

The problem is that in remote areas, it is difficult to have an ongoing interaction with the families. Our region is spread out over northern Quebec and we can't have contact with the family that often. So what we try to do is use the workers at the community level. We have had some success in that.

Response **Lynne Mourot**. One of the issues we have been looking relates to the sentencing advisory and the community advisory committees. Could they also be used when a youth is coming out of the system to provide support for the youth and family? We would involve them in the planning for the youth. Right now we are asking them to come up with community options. We are considering how the community advisory committee can stay involved with a youth in those cases where he or she has to be removed from the community to go to a group home or into custody. They can be a support mechanism when the youth returns. Although we haven't tried it yet, it certainly is an option.

Comment **Judge Fafard.** I would have to learn more before I would be able to comment. I don't know just how that proposal might fit in with the culture. From what I understand, there is a principle of non-intervention amongst Native people. People don't meddle in others' business that much. It might not be culturally acceptable for a neighbour or someone else to come along, even if he is an elder. I would be a little concerned about that without more knowledge. It might clash with the culture to do that.

It would take some time before we know just how well these committees are accepted by the community. Maybe we have to walk slowly. It would have to be judged on the basis of individual communities—does the community have confidence in the committee; and do they feel that the committee represents the community's interests? You have to be very careful when you are on a committee.

Comment **Member of Audience.** I think about my communities, the small villages, and I think about the number of different groups, committees. There is a city council, a village government council, and there's an advisory school board, and there are a couple of other committees operating in the village. For the most part, you are going to have the same bodies on all the committees. You would think that would promote some kind of collaboration, but it doesn't. Everybody puts on a specific committee hat and then they say: "Oh, this is this committee. I can't talk about how this problem relates over there because that's out of order." I get concerned when I hear about more committees.

On a personal level, I understand the non-intervention concept. On a community level, at least where I am working, I don't get a sense that people don't want to be involved. They want to be involved in doing something about problems. They don't know what's to be done, but they want to do something.

Response **Judge Fafard.** I'm just hoping that it will develop. That's why there hasn't been any direction from me. I've stayed away from trying to give people direction about how to form the committees and how to name the people to them. I'm hoping that they will decide how to do that.

You have to plant the seed with people in leadership roles who are respected in the community. I know from personal experience that they lead on issues. They will speak their mind on things. Perhaps they have had political involvement in things and have done some of this and some of that. Once the idea is in the mind of a few people in the community—one or two people who think that advisory committees are a good idea—I think they are probably quite capable of deciding where to go from there. I am afraid it would be a mistake for me to say, "Well, then your village council should name these community members to the committee."

I happen to know most of the people who are on these committees. We will have lunch together at noon and we'll just talk. They tell me their expectations as well. Gradually, we begin to understand what might work here. We help each other. Personal contact is so important.

Comment **Member of Audience, Quebec.** One thing that's in process in our area is that we are approaching the communities through community consultations. We meet with the chief, council, and different heads of community bodies such as the school board and the health committees. They're part of the community resource sector. At times, the elders are involved in the discussions. Spirituality also has to be part of the program. That's a valuable tool. It's not somebody from outside who's leading the way. What we stress all the time is that a Native person has to be in charge.

In our social services, we have twenty people. Most are Native workers and managers. In time, all the services will be provided by Native people. We are starting to talk about a youth and the elders coming together to jointly plan the direction for the youth's life. It is slow. But the elders direct us not to rush but to involve people.

Sometimes the courts are okay. Sometimes we have a hard time with them. People are starting to say that they can deal with certain issues in their communities. There was one incident in our community where we just got fed up with young people who were causing trouble. The kids were placed in confinement under supervision. The court (which only comes every four months or so) told the community that was illegal. But the community said, "We solved the problem." And that in itself woke up everybody.

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18

MISTIK NORTH: A PROGRAM FOR COMMUNITY YOUTH AND YOUNG OFFENDERS

RESOURCE PERSONS

Lynne Mourot, Regional Young Offender Manager, Prince Albert, Saskatchewan

Bill Watson, Director, Creighton Youth Residence, Creighton, Saskatchewan

This presentation focuses on the creation and operation of Mistik North, a Junior Achievement program operating in an open-custody facility. The pilot project involves youth from the community of Crieghton, Saskatchewan, and from the Creighton Youth Facility.

THE JUNIOR ACHIEVER PROGRAM

Lynne Mourot

Junior Achievement Canada is a program that is generally targeted for high school students, those who are achievers or high achievers. It is part of an international, non-profit organization, financed by business and individuals.

Each Junior Achievement area has a volunteer board of directors that is responsible for setting local policy and securing the necessary funding and human resources for the program. You look for local people who then become program catalysts.

This educational program provides high school students with practical business experience, together with some insights into the complexity of the profit-and-loss system. It attempts to develop a positive attitude amongst youth as well as an understanding of initiatives, productivity, risk-taking, and free enterprise. In our case, the program involves young offenders who are not high school students and who may not have been in school since grade six or seven.

The program objectives are accomplished by offering members the opportunity to organize and actually operate their own business. They set up a business, form a board of directors, elect officers, and, when it's over, dissolve the business and disburse whatever money there is. They also produce a financial statement. The companies receive management consulting assistance from volunteer advisors and from the local business community.

Mistik North—mistik is the Cree word for wood—is the only Junior Achievement program in Canada that involves youth in a custody facility. While the program we operate also involves youths from the community, it was developed primarily for and with youth in custody who were generally considered to be uncooperative underachievers. Predisposition reports often describe them as youths who have difficulty reading, difficulty following directions, few social and employment skills, and low self-esteem. Sometimes, there's also the generalization that they aren't intelligent enough to learn employment skills.

We feel differently about these kids. So we developed this program for youth in custody and from the community. Currently, twelve kids from the facility and six from the outside community are involved. What's exciting about the program is that the kids' enthusiasm and abilities have come through loud and clear.

In the facility, the program is an extra-curricular activity, just like Junior Achievement programs elsewhere in Canada. It has been transplanted into the facility with the same kinds of program expectations we have for other

Junior Achievement programs. It's not part of the day-to-day tasks of the young people. During the day, they go to school or they go to work and, on Tuesday evenings, they attend the program.

The program is based on an educational process that talks about or looks at participants on several levels: a cognitive or knowledge base, skills development, and attitudinal objectives. Each level has a set of objectives that's developed by the Junior Achievement Canada Corporation or governing body. Although the objectives are the same across the country, some objectives fit better in some programs than others.

Cognitive or knowledge base. The cognitive objectives address the elementary process involved in organizing, operating, and completing tasks in a business. Participants learn about shareholders and their role in a business. They review the whole economic system. They look at risk, capital, productivity, profit and its distribution, and their roles in the economy. These objectives are very business-oriented. Other goals include defining the role of government, explaining the role of competition, examining the primary individual and corporate responsibilities of shareholders, and describing the management process used in corporate activities. These cognitive objectives are dealt with throughout the twenty-six weeks of the program.

Skills development. There are several skill objectives that are extremely important for making youth self-sufficient. These objectives include developing goal-setting skills and working effectively with peers, subordinates, and supervisors—all practices a youth might have to use in any job that he or she might have. Other skill objectives include communicating ideas and concepts more effectively, providing leadership within the group, relating effectively to co-participants, analyzing situations and problem-solving, performing well in the work environment, and presenting themselves more effectively in a variety of situations. A further goal is recording, analyzing, and presenting basic corporate data to help make effective management decisions.

Attitudinal objectives. These program objectives include understanding personal responsibility, appreciating the value of working cooperatively with other people, and appreciating what you learn from failure. So often, we think of failure as just failure and not as a learning experience.

Many of the youth we work with don't have self-confidence and don't have confidence in their abilities. They've been shot down. They've been put down and they need to develop confidence in themselves and their abilities. Sometimes the success of seeing something that they have built for themselves, or accomplished themselves, is a real motivator and confidence-builder.

Another goal is demonstrating a positive awareness of and commitment to free enterprise. This element of the program depends on the business. But all participants develop a working commitment to their roles in the Junior Achievement program, so that no matter what their role, they're committed to the program. Appreciating the importance of personal initiative and enterprise and understanding the value of integrity in business are also stressed.

These objectives are discussed to varying degrees as the youth take part in the program. Some of the objectives can be measured very tangibly when the program is over. Others are more difficult to measure, and we may not see the results while the youth are in the program, particularly with some of the skills or attitudinal objectives. These results may become apparent years from now in terms of increased self-confidence, for example.

Most youth who participate in the Junior Achievement program across Canada are twelve- to twenty-years-old. The program is usually based on a twenty-six week business cycle. When participants form a company, they select and produce a product or service; this initiative is self-directed. Each participant becomes a shareholder, so they have a real stake in the business. They're a member of the company's board of directors, and, as such, participate in all decisionmaking processes.

Participants in the program are called Young Achievers. Through actually participating in a working company, they learn about the various roles, incorporation, goal-setting, board organization, manufacturing and marketing, financial recordkeeping, wages and salaries of any company, corporation, or business. But it's not all work. They gain other benefits: they make new friends, maintain or obtain valuable job contacts, and get good references in the community of Creighton. They're really gaining personal credibility and recognition for their product and company. Now, these kids, when they go looking for jobs, can say, "Hey, I was part of this. And it was successful."

At a recent Junior Achievers' conference in Edmonton, involving people from across Canada, two youth from the Creighton project presented a summary of some of the things they had been doing. They got exposure to other people. And others were exposed to them. That helped the youth recognize some of the good things they had done while gaining their business experience, developing leadership talents, and learning about human nature through the Junior Achievement program.

THE MISTIK PROGRAM

Bill Watson

When a Junior Achiever program was organized in 1990 in Flin Flon, Manitoba, the woman who set it up, Cathy Hines, came to me. I thought about trying a program in the youth residence. We put forth a proposal, sent it in to Junior Achievement Canada, and they accepted it. We tried to run two companies, one involving kids from the community of Creighton and the other for kids in the open-custody facility. But we were unable to do both for various reasons. So some of the community kids participated in the program based at the custody facility. I serve as the program advisor but all major decisions are up to the kids. We set our goal as turning a profit of forty per cent on each five-dollar share.

We received a donations from a local mine and smelting company, the Friendship Centre, the Creighton Board of Trade, and other local organizations and companies. Once we formed the company, we had to decide on the product, and what would sell and what wouldn't sell. The youth wanted to make clocks. Before Christmas, there was a great market for clocks, so we sold forty-six clocks and made a profit.

The other product that we thought would sell is a fish-measuring device. In Manitoba, you're only allowed one wall-eye that must be over 22 inches. For lake trout, the no-kill slot is between twenty-six and thirty-one inches. They all go back in the lake because you're not allowed to keep them. So everybody has to have a device for measuring fish. And we came up with a very simply made device that sells for $12.85. Although we live in Saskatchewan, Creighton is on the Saskatchewan-Manitoba border; most of the fishermen and the lakes are on the Manitoba side. That's the reason for making our plans based on Manitoba's regulations.

When we started this project, we had no tools, we had no saws, we had absolutely nothing. But I know a lot of people. I've been around for about twenty-two years in the system. I know where there are things that aren't being used. So I managed to get a radial-arm saw, a bill press, a table saw, a sander, a jig saw, and several other pieces of equipment that we needed. And with the money that we had raised from the community, we were able to buy the rest of the equipment.

So here we were with kids, many of whom had only a grade five or six education, and we were going to start a company. And they were going to work in it. And they were going to make it work. It was indeed a chore. They thought, initially, that the kids coming in from the outside would get all the good jobs. But we took applications for the various company positions. The president of the company is a resident of the centre with high school grade ten. Only two people from the community have jobs as vice-presidents. The rest of the jobs belong to the kids in the centre.

The presidents and vice-presidents get a wage of eight dollars a month. Each labourer makes fifty cents an hour. We operated every Tuesday night for three hours. As each week passed by, we continued to get everybody involved. They were all doing their jobs until just about three weeks before Christmas. Then we had a large order for clocks. And the quality control manager fell down on the job. We had about twenty-five clocks ready to go, and he had not done his job. They had all been finished inside, but, when we needed to put in the clocks' workings, the holes weren't big enough. Ordinarily, it would have been funny. But it wasn't funny. We had orders and some of the boys were taking their jobs fairly seriously. Talk of who was responsible went down the line. That put us behind almost two weeks. So we had work to do to get those special order clocks out for Christmas.

At the end of the first quarter (week eight), the books are audited to see if we made a profit or have a loss. There's a financial report done just like any other company. At that point, we were about three weeks behind. We thought we were going to have to operate for twenty-nine or thirty weeks, rather than twenty-six, because of exams, Christmas break, and other interruptions.

Going over the time limit doesn't create a problem for us. It may cause a problem for Junior Achievement Canada because they're quite strict. We have bent and twisted the structure of the program somewhat to suit our needs in the centre and to meet the needs of the kids. And we probably ended up doing more of the paperwork than we should have because the kids couldn't do it. But we were having fun. It's hard to teach a kid that has a grade six education how to do books. So he becomes the kid who buys all the lumber, rivets, saw blades, and glue that you use in the product.

Everyone has a job. The product should have five or six steps in the manufacturing process. That way, everybody has a job. The president—he's out there sanding clocks the same as everybody else—but then he gets eight dollars a month. The labourers are sanding clocks and making fifty cents an hour. But they may also be selling clocks and making a ten per cent sales commission.

At the end of the fourth quarter, we liquidate, just like an ordinary company. We prepared a huge financial report, and if we make a profit, we will pay back our shareholders their investment plus profit. And if we haven't made a profit, most of the kids are willing to take a clock home as wages. At the present time, it looks like we're going to make a profit. I'm not sure if it's going to be the forty per cent we were aiming for at the start of the year, but we will make a profit. When the books are closed, they're submitted for an audit as in any company.

The program gave the kids an opportunity to operate unfamiliar equipment. An important part of the program was that the kids did safety checks on the equipment that they were going to use that day, including the radial-arm saw, jig saw, band saw, and drill press. They learned to cooperate, to depend on each other, and do their job so that the next person down the line can go on with the product and do his part of the job.

REFLECTIONS ON THE PROGRAM

Lynne Mourot

This is the first time the Junior Achievement program has operated with young offenders. But the program could also be used for all types of educational groups. In Flin Flon, kids from the community and from the high school are involved. The nice thing about the program is that it is not limited to one particular group or to one type of product. Also, you don't need a lot of money to get started. The bills are paid out of the product revenue. Right now, they are in the process of starting up a new product for the tourist season. It is a good luck charm made of copper ore from a mine in Flin Flon. You take it fishing, and if you are not having any luck, you throw it to the north. And you will immediately catch a fish. If you don't, you can bring it back and we'll refund your money. This product will be on the shelves soon in Flin Flon and in Creighton and will sell for a dollar.

The program teaches the kids the importance of following through and that you have to do the whole job and not just pieces of it. They learn this for themselves, rather than having someone lecture to them. They have very concrete examples of what happens when somebody doesn't do their job, and that carries right over to whether the product can be produced and sold. Like the problem with the clocks at Christmas. It's a very concrete way of learning from your mistakes as well as your successes.

The product can be whatever the group decides that it should be. Then it fits with where they're coming from. It's not just something that's imposed or something that takes a great deal of money to set up. At one point, some kids were about to give up and, at another point, were thinking of letting the project go under. As an advisor, all you can do is advise. If that was the decision that the kids wanted to make — that the company would go under — then you had to let them do it. But two or three kids said, "No. We have taken orders and we have promised people that we will have clocks for them to give as gifts for Christmas." And they were the kids who kept it going.

Probably half-a-dozen of the eighteen kids kept the program going through the rough spots. In July, we got an order for fifty clocks, and that's going to put us over the top. Otherwise, we would have finished, liquidated the company, and given everybody their money back.

It's been a real learning experience. I am a social worker, not a businessperson, and I'm having a lot of fun with this program. I've really appreciated the way the kids meshed as a group and the way they cooperated to make the enterprise work.

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19

DESIGNING A SPECIALIST FOSTER FAMILY CARE PROGRAM IN NORTHERN COMMUNITIES

RESOURCE PERSONS

Burt Galaway, Dean, Faculty of Social Work, University of Manitoba, Winnipeg, Manitoba

Joe Hudson, Faculty of Social Work, University of Calgary, Calgary, Alberta

Burt Galaway and Joe Hudson examine the concept of "specialized family care" and its potential application in northern and rural communities. Their discussion reviews the technique of specialized family foster care, presents the results of a North American survey designed to identify the general characteristics of specialist foster care programs, and identifies the kinds of populations for which these programs have been used have or are currently being used. Finally, the costs and effectiveness of specialist family foster care programs are considered.

INTRODUCTION

Foster family care in Canada and the United States has gone through a series of evolutionary steps. Informal arrangements for responding to the needs of children preceded the development of formal structures and agencies that removed children from their families and communities. By the latter half of the nineteenth century, different ideas were beginning to emerge, centred on the idea of keeping youth close to their families so that they could return to their homes. The practice of matching youth to particular foster family placements developed, as did the practice of paying foster parents. Those ideas have permeated nearly all family care practice until relatively recently.

In the early 1970s, another notion of foster family care emerged: special foster family care. The intent was to professionalize the role of foster care providers, a development that has gained tremendous momentum over the past twenty years. Now there is an international organization called the Foster Family Care Treatment Association, annual conferences, and a journal. Specialist foster family care is becoming a fairly common service program for children and for adults who might otherwise receive institutional care.

THE CONCEPT OF SPECIALIST FOSTER FAMILY CARE

What do we mean when we talk about a specialist foster family care? Are we speaking about treatment foster care? In fact, a number of terms describe this program, including specialist foster family care, treatment foster family care, and family-based treatment foster care.

Two definitions are interesting in terms of the development of programs in your own community. Robert Snodgrass defines an approach in which the treatment program is designed by professionals—psychologists or social workers—on the staff of the foster care agency. The foster family then implements the professionally designed treatment program. Snodgrass defines treatment as requiring three components: a stated measure or goal; written procedures that the foster family will use to reach that goal; and an evaluation mechanism or a process for regular assessment of results.

That Robert Snodgrass is a psychologist is reflected in his definition; I personally prefer a more holistic approach. This alternative stresses that the care of the child occurs within a foster family but shifts the focus to normalization. Treatment then provides the child with the family and community living experiences typical of the normalization or socialization experiences of the child's own culture.

In specialist foster family care, the concept of teamwork is stressed. The birth parents and the extended family of the child are key members of the treatment team, working with the agency and the foster care providers. We stress the importance of networking that views foster care as a part of the broader cultural and social milieu. And we work together toward creating an environment for normal socialization experiences.

There is no reason we cannot incorporate ideas from both of these definitions of specialist foster family care.

THE COMPONENTS OF SPECIALIST FOSTER FAMILY CARE

There are at least six basic components of specialist foster family care:

1. **Substitute care is provided in a family setting.**

2. **The foster family care providers establish lasting relationships with the child as well as with his or her family.** Traditional foster care tends to cut off the relationship between the child and the birth parents when the child leaves the home. Traditional foster care practices usually discourage interaction and communication between the foster parent or the foster care provider and the child's birth family and extended family. Because many of us believe this arrangement is very artificial, we often encourage the development of relationships. However, professionals in the field do not agree on this point.

3. **Foster family care includes the child's birth parents, extended family, and community.** The term "inclusive care," coined by a British social worker in the mid-1970s, goes well beyond the traditional notion of visitation. The care plan for the child involves the child's birth parents, extended family, and often representatives of the child's community in the planning of the foster care delivery. The underlying assumption is that the child's birth parents and extended family are very important to the child—even in situations in which the foster care

placement is defined as long-term permanent placement. This assumption is based not only upon the expectation that the child will return home (many will not), but rather on the child's own developmental needs. Within the specialist and treatment foster care communities, inclusive care is supported in principle, although there is reluctance to move beyond past practice. The debate now centres on how an inclusive care policy might be implemented.

4. **The specialist foster family care parents are paid for their services.** Foster care parents must be carefully selected, trained, and supported to pursue a career in providing inclusive care to children and their families.

   The specialist foster care program just being set up in Edmonton pays a foster parent $1,200 per month, one weekend off a month, and training money in addition to expenses for the child. A foster parent with two children would be paid $2,400 per month. Payment must be competitive. In most families today, both parties work; if there are two parents in the family and both work outside the home, you have to provide sufficient income to compensate for the job that one of them gives up to become a foster parent.

   When you think of the cost of sending kids out of the community and putting them into institutions, you can buy a lot. The high cost of institutional care means that you could put all of those kids in foster homes, pay foster parents a high wage, and still save money. And the number of foster parents would exceed the number of institutional staff. For example, in Manitoba, youth are often flown to southern treatment centres from northern communities; they are separated from their families at a very high cost. This money could be better channeled into communities to help them develop foster family skills to care for children.

5. **Specialist foster family care is an alternative to traditional foster care and more restrictive institutional settings.** Specialist family foster care is more intense and involves children who might otherwise be in institutional care; it is more expensive than traditional foster care.

6. **Specialist family foster care is provided by trained personnel.**

In sum, specialist family foster care offers an alternative to institutional care and is provided by specially trained and paid foster parents. The concept of inclusive care is generally accepted, as is the notion of contin-uing, permanent relationships amongst foster care providers, the child's birth family, and the children, although this latter point is still debated.

Comment **Member of Audience**. Speaking from a small community perspective, as a social worker my problem can be keeping the parents away from the child. They may have daily access. But when parents are denied access to the child, often we have to remove the child from the community to ensure that doesn't happen. So access between the two families is not a problem; however, terminating access can be a problem, even when it's in the best interests of the child.

Question **Member of Audience.** How do you determine that it is in the best interests of the child to have access to their parents or, conversely, to be denied access?

Response **Member of Audience.** In the case I was referring to, the child had parents who were not amenable to having their access denied. So I had to remove the child from the community. The parents were always causing a disturbance and it was not in the child's best interests to have access to the parents.

Comment **Member of Audience**. In deciding what is in the best interests of the child, you have to walk in the child's shoes. Sometimes a child needs to be with Mom and Dad and family, in some cases only to learn that he or she doesn't want to be there any more. Many of our older adoptions in the social services, as soon as they turn sixteen or eighteen, go home to see what home was all about and why they were adopted.

Comment **Burt Galaway.** Specialist foster family care rests on the assumption that access is in the best interests of the child. The access may have to be carried out in a way that protects the child's well-being. In specialist foster family care, we are talking about regular communication between care providers and the child's family.

Comment **Member of Audience.** Perhaps when a child or a family stumbles, we have to break somebody's leg before we start treatment.

Response **Joe Hudson.** You are absolutely right. Unfortunately, the leg that we are referring to means putting kids, as well as adults, in institutions. That's the nature of the broken leg that we apply universally in our society. Somehow we think there's a value in putting people in joints. In fact, all of the evidence available shows us very conclusively that joints aren't good for folks. Nursing homes aren't good places for people; correctional institutions aren't good places; psychiatric treatment facilities aren't good places for people—when compared to raising and assisting people in a family setting.

Who would ever choose to raise their children in an institution? I don't know anybody that wants to do that. In our society we raise them in the context of a family. Of course, the nature of that family may be quite different. It might be headed by two people of the same sex, an extended family, or a one-parent family. But it is a family. It isn't an institution. And that's the critical point that needs to compute.

I want to make a few summarizing points here. We need to be careful when determining what is in the best interests of the child. We need to be clear that a judgment is being made and this raises the question about the evidence for that judgment. We need to be very careful when thinking through the evidence for judging what is in the best interest of the child.

The second point relates to the contact between the child in foster care and the child's birth parents, siblings, and extended family. In very serious cases, the contact may be supervised or limited in amount, type, or frequency.

Question

Member of Audience. When you deal with the issue of inclusive care, you must remember that the court and the various agencies involved have total authority to do whatever they want with a kid. If the parents don't want to participate or don't want to develop their own way of dealing with the problem, then how do you deal with the issue of inclusiveness? The assumption is that the parents are going to want to do something.

The example I would offer is the kid who may have severe developmental disabilities and the parents can't handle that. The parents will maintain contact with the kid but—the fact of the matter is—they're not realistically going to deal with that child on an ongoing basis. So what do you do with that kid? What kind of a placement are you going to choose?

Response

Burt Galaway. People should not be denied the opportunity to participate. Even a family that has serious alcohol problems has strengths. The concept of inclusive care means that people participate from their strengths as much as they are able. The approach is: "You will participate. You will be consulted. We will talk with you. And, if you show up drunk, if you make promises to your child that you don't keep, we will also talk with you about that." What they are going to do to address these types of problems will be a part of the overall plan. Dealing with the conditions that are affecting the family are more important than sending the kid away.

Comment

Member of Audience. I work in a Native child welfare agency in northwestern Ontario. We service twenty-nine communities in the Nishnawbe-Aski Nation. Two of those communities are accessible by road. The rest are remote. My position is working with the foster families and children in care. With the remoteness of the communities that we serve, there are some problems of access when a child is removed from the community. So, we will not remove a child from that community as a first attempt to help that child. We operate on the philosophy of keeping the child and family together as well as working with the extended family in the community.

RESULTS OF A SURVEY OF SPECIALIST FOSTER FAMILY CARE

Programs included in our survey were explicitly identified as a specialist foster family care program and had an identifiable name and budget. A key program goal must be to serve clients who would otherwise be admitted to or retained in a non-family institutional setting. Care is provided in a residence that is owned or rented by the family providing treatment services. The foster parents are considered members of the service or treatment delivery team, are paid at rates above those for providing regular foster care, and are given training and support services.

The survey covered Canada and the United States. Of the 430 returned questionnaires, 293 programs met all of the above criteria. Among the survey findings were the following points:

1. **Sixty-nine per cent of the programs were administered by non-profit agencies such as Catholic social services and Jewish family services.** For-profit agencies administered eight per cent of the programs.

2. **The majority of the specialist foster family care programs are not "free-standing" but rather part of an agency that delivers other types of child welfare programs.** Eighty-two per cent of the responding programs indicated that they were involved in operating non-family-based service programs in addition to the specialist foster care program. The most common service delivered by these agencies were group home programs.

3. **The majority of specialist foster care programs have been established since 1980.** The vast majority were developed after 1985.

4. **Most of the programs are small, having budgets in the $200,000 - $400,000 range.** Thirty-four per cent of the programs had budgets of less than $100,000 (US). Relatively few had budgets of one million dollars or more. The programs appear to be relatively modest in terms of their budgets and in terms of the number of children served.

5. **Specialized foster family care parents participate in support groups.** Over two-thirds of the programs surveyed required foster parents to participate in group support meetings. The purpose of these biweekly or monthly meetings is to receive support and assistance from other foster parents involved in the program.

6. **Most programs use written service agreements called treatment plans.** Ninety-six per cent of the programs surveyed used such agreements to outline their responsibilities, goals, and the expected duration of the placement. All parties, including the foster parents, the children in care, the birth parents, the specialist program social worker, and the referring public agency social worker, meet to develop these plans. Over half of the service agreements cover a period of five weeks to three months, at which time the service plan is renegotiated, reassessed, and redeveloped in a formal agreement negotiating process.

In summary, most specialist foster care family programs are small and operated by private, non-profit organizations rather than government agencies. Key ingredients include professional social workers or other human service workers, small caseloads, better-paid foster parents, and group support meetings. The foster family care providers must also meet training requirements and standards.

Comment **Member of Audience.** In Alaska, the state contracted with a Native non-profit organization for the delivery of foster care and social worker services. The state uses a social worker as the investigator; cases are then referred to the non-profit organization that provides services, assists in case plan development, and reports to the state and the court on case progress. The state worker essentially acts in a supervisory role.

Response **Joe Hudson.** In larger areas in Canada, such as Edmonton and Yellowknife, the public agency social worker operates as a manager of services rather than as a service provider. In the specialist foster family care area, most of the services are provided by private, not-for-profit agencies rather than public agencies.

Most of the caseloads are small. Over half of the surveyed programs set the limit at ten cases. This means that social workers in specialist programs will not have a caseload in excess of ten youth in care. The next most common is eleven to twenty cases. Then there are a very small number of programs that set the maximum caseload in excess of twenty cases. These caseloads are relatively small in comparison to the caseload carried in public agencies.

SPECIALIST FAMILY FOSTER CARE FOR THE ELDERLY

In the literature dealing with adult foster care for the elderly, there are some very interesting studies. At Johns Hopkins University in Maryland, a study was conducted in which a group of elderly persons in foster families were compared with a group placed in a nursing home. On every single indicator, including quality of life and medical health, family care was much superior to the nursing homes.

About eight years ago, the state of Oregon was faced with increasing numbers of elderly people. The restricted types of available care included nursing homes, hospitals, and some intermediate care facilities—all of which were very, very expensive. (It might be added that, in Edmonton, the elderly occupy one-quarter of the acute care hospital beds because there is nowhere else for them to go.) When Oregon confronted this problem, those responsible for delivering care established a foster care program for the elderly. Today, nearly 10,000 elderly people are in foster family care across the state. The elderly are not pushed into foster family care: it's an option people can choose from a continuum of care possibilities.

The nursing home industry was the biggest obstacle that Oregonians faced in setting up foster family-based care. As might be expected, that industry fought the program tooth and nail. But the associations of elderly persons in the state took on the nursing home industry; they have neutralized the opposition to a considerable extent. Oregon now provides a wonderful example of new possibilities for the care of the elderly.

A wide range of populations, including male and female offenders, could benefit from specialist foster family care. The objective is to find some way of keeping these people closer to their homes and their support systems.

This approach is not being soft on the offender: it benefits both the offender and society.

Several years ago, a program based on the specialist foster family care model was established in the state of Minnesota for seriously violent, chronically repetitive young offenders. The young men in the program were required to have a community sponsor who took some responsibility for their behaviour. Others cared for in specialist foster family care programs include crack babies, babies with AIDS, and mentally ill adults.

Foster family care has a precedent in a program in Belgium which has been in operation since the twelfth century. In a small town of approximately 25,000 people, one out of every four households has a mentally ill person from the hospital living in the home. This very, very famous community is tolerant of minor deviant behaviour. I think it would be an interesting community to live in.

RESEARCH FINDINGS

A lot of nonsense is propagated under the title of evaluation research. The *real* question is "Do these programs work? Are they successful?" The second question is "How do you know that they work, that they are successful?"

One dimension of success is the quality of care experienced by persons in specialist foster family care and those in institutional settings. A major study in England examined children's homes, family care homes, and institutional settings. On every indicator of quality of care, foster specialist programs were much superior to the institutional programs.

Another way to evaluate program success is in terms of the program operation itself. Compare the people who come into the program with who they become by the end of the program. Are there changes in their behaviour, attitudes, and feelings about themselves? Four major studies have addressed these issues. Three studies were in Kent, England; the fourth focused on the Alberta parent-counsellor program, an international pioneer in foster family care. In all four studies, significant changes were reported in the children.

A third way to assess program effectiveness is to follow people after they leave the program. (The field of corrections has done that for many years to determine rates of recidivism.) Several studies have examined how children do after foster family care as compared to children after institutional care.

A study in Pennsylvania found that youth placed in specialist or treatment foster family-based program were discharged to less restricted placements more frequently and were readmitted less often to out-of-home placements during a one-year follow-up period than youth who had been in residential treatment. Youth in specialist foster family care program were most frequently discharged to their birth parents' and family homes and they remained in those homes for more time during the one-year follow-up period.

A study in Oregon involved youth from a psychiatric facility who had been diagnosed as dangerous to themselves. They were randomly assigned to specialist foster care programs and to a variety of other treatment programs in the community including residential treatment, intensive supervision, and group homes. For one year after their treatment program, the youth were tracked, with the conclusion that those assigned to specialist foster care programs averaged significantly more days in the community during the one-year follow-up. In other words, they remained in the community to a greater extent than did children who were discharged or placed in alternative kinds of placements.

The bottom line is that studies almost consistently show the greater benefits of specialist foster family care in comparison to placement in an institution. Research findings generally suggest the following.

1. **Persons with serious problems can be handled in specialist foster family care programs.** These programs can serve as a viable alternative to institutional placement.
2. **Significant changes occur in people who are placed in such programs.** These changes include their behaviour and attitudes toward themselves and others.
3. **Most specialist foster family care programs can be completed as planned.** A common problem in traditional foster family care has been

the breakdown of placements; however, in specialist programs, sixty-five to seventy per cent of all placements are completed as planned.

4. **Success rates, based on post-release follow-up over a one-year period, favour specialist foster care in comparison to institutional alternatives.**

5. **There are lower costs associated with specialist foster care programming in comparison to residential care.** Specialist foster family care can be delivered at lower cost than institutional care, including group homes, residential treatment, correctional, and psychiatric institutions.

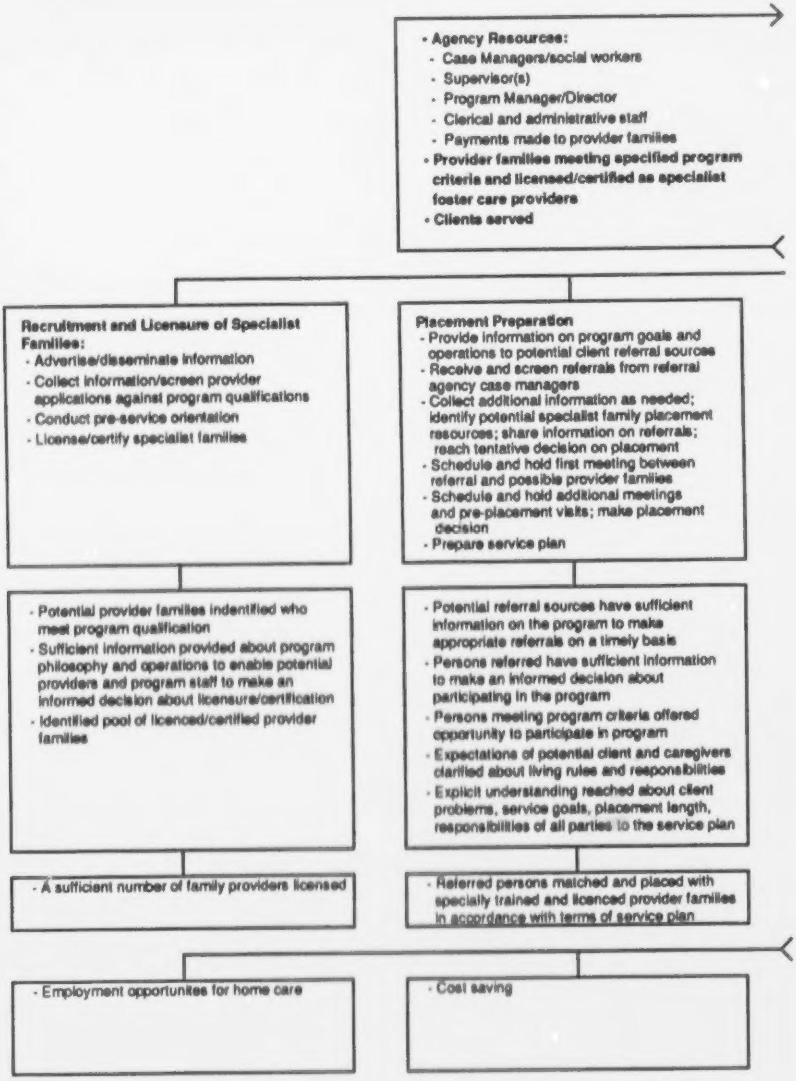
Figure 1 (following page) outlines a program model for specialist foster family care. Although individual programs may deviate from this model in some key respects, you generally do not find major deviations. Key components in specialist foster family care programs include:

Inputs. The program involves the provider family, youth served by the program, referral agencies, and a variety of community resources. The intent of specialist foster family care is not to duplicate community resources but to refer to and make better use of those resources.

Activities. Those associated with the program include recruiting and licensing specialist families, preparing placements, implementing and ending programs, and following up. For example, the key tasks in placement preparation is to provide information on program goals and operations to potential client referral sources. Since the provincial or regional departments for the state or county department of social services will make referrals, they should be kept well-informed.

Immediate, intermediate, and ultimate results. As outlined in Figure 1, a wide range of results is associated with each of the above-noted activities.

Question	**Member of Audience.** What is the potential for using specialized foster family care in Native communities?
Response	**Joe Hudson.** If members of a Native community were interested in establishing a specialist foster family care



- **Agency Resources:**
  - Case Managers/social workers
  - Supervisor(s)
  - Program Manager/Director
  - Clerical and administrative staff
  - Payments made to provider families
- **Provider families meeting specified program criteria and licensed/certified as specialist foster care providers**
- **Clients served**

Recruitment and Licensure of Specialist Families:
- Advertise/disseminate information
- Collect information/screen provider applications against program qualifications
- Conduct pre-service orientation
- License/certify specialist families

Placement Preparation
- Provide information on program goals and operations to potential client referral sources
- Receive and screen referrals from referral agency case managers
- Collect additional information as needed; identify potential specialist family placement resources; share information on referrals; reach tentative decision on placement
- Schedule and hold first meeting between referral and possible provider families
- Schedule and hold additional meetings and pre-placement visits; make placement decision
- Prepare service plan

- Potential provider families indentified who meet program qualification
- Sufficient information provided about program philosophy and operations to enable potential providers and program staff to make an informed decision about licensure/certification
- Identified pool of licenced/certified provider families

- Potential referral sources have sufficient information on the program to make appropriate referrals on a timely basis
- Persons referred have sufficient information to make an informed decision about participating in the program
- Persons meeting program criteria offered opportunity to participate in program
- Expectations of potential client and caregivers clarified about living rules and responsibilities
- Explicit understanding reached about client problems, service goals, placement length, responsibilities of all parties to the service plan

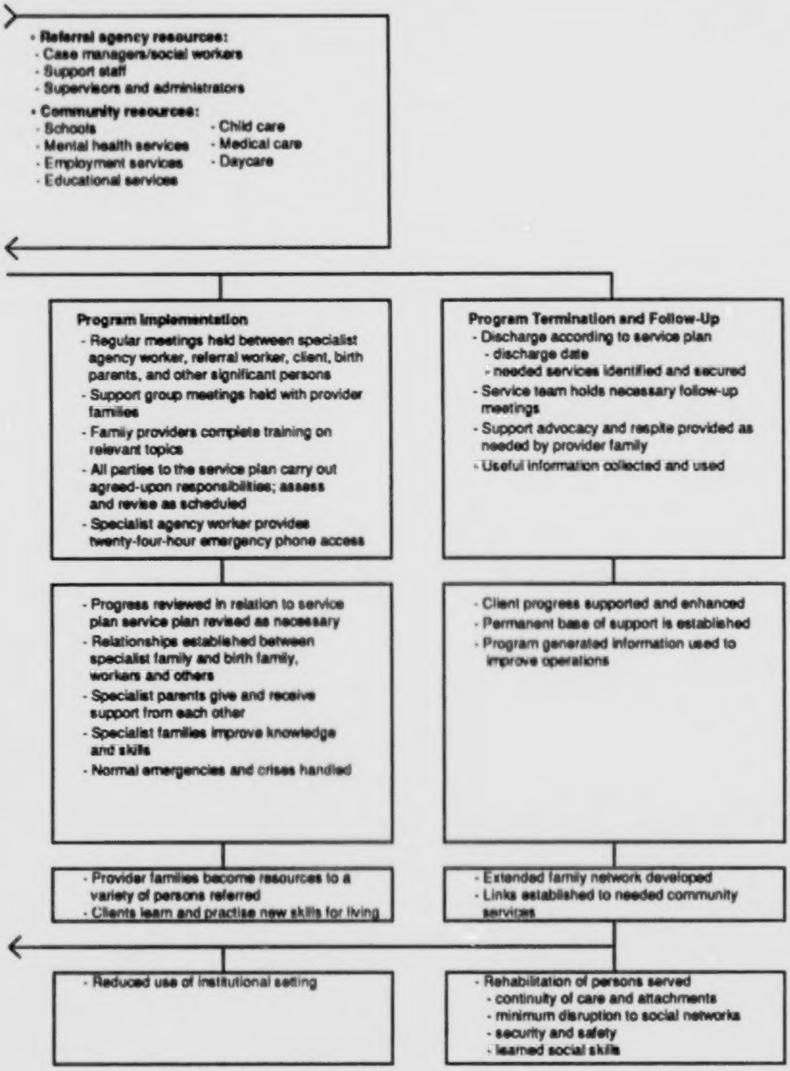
- A sufficient number of family providers licensed

- Referred persons matched and placed with specially trained and licenced provider families in accordance with terms of service plan

- Employment opportunites for home care

- Cost saving

Figure 1. Specialist Foster Family Care Program Model



- **Referral agency resources:**
  - Case managers/social workers
  - Support staff
  - Supervisors and administrators
- **Community resources:**
  - Schools
  - Mental health services
  - Employment services
  - Educational services
  - Child care
  - Medical care
  - Daycare

Program Implementation

- Regular meetings held between specialist agency worker, referral worker, client, birth parents, and other significant persons
- Support group meetings held with provider families
- Family providers complete training on relevant topics
- All parties to the service plan carry out agreed-upon responsibilities; assess and revise as scheduled
- Specialist agency worker provides twenty-four-hour emergency phone access

- Progress reviewed in relation to service plan service plan revised as necessary
- Relationships established between specialist family and birth family, workers and others
- Specialist parents give and receive support from each other
- Specialist families improve knowledge and skills
- Normal emergencies and crises handled

- Provider families become resources to a variety of persons referred
- Clients learn and practise new skills for living

- Reduced use of institutional setting

Program Termination and Follow-Up

- Discharge according to service plan
  - discharge date
  - needed services identified and secured
- Service team holds necessary follow-up meetings
- Support advocacy and respite provided as needed by provider family
- Useful information collected and used

- Client progress supported and enhanced
- Permanent base of support is established
- Program generated information used to improve operations

- Extended family network developed
- Links established to needed community services

- Rehabilitation of persons served
  - continuity of care and attachments
  - minimum disruption to social networks
  - security and safety
  - learned social skills

program, they could establish a private agency to do that. If they can secure a contract and a commitment from the government to pay a certain rate for each case, this support would make it much less difficult to implement.

Comment **Member of Audience.** One of the major problems that we face in the north, which hinders the development of programs such as specialist family foster care, is housing. We are grossly underhoused. There is a three-year waiting list to get a house in many communities. There are often few services in the community. Youths are often sent out of the community because the community cannot cope with them. Many communities themselves are dysfunctional. When the whole community is dysfunctional, it's unlikely that you're going to find a single family household where you could place kids.

Child care agencies open and close institutions like some kind of board game. They take out kids who could be managed in the community. We have a foster child right now in the Northwest Territories; they want to send her to a secure facility in Edmonton. There was no reason for her to be sent to this facility except that the person who abused her was a well-known government figure and they wanted to get her out of the community.

Response **Joe Hudson.** I understand the lack of housing and the difficulties that this presents. Perhaps monies for additions on houses would have to be provided in the program budget. This would still cost less than sending kids out of the community to residential facilities.

Comment **Member of Audience.** But even building more houses doesn't necessarily work in the north. You can pay many individual foster parents. They are all government workers. Today, they're here and tomorrow they are gone. We recently put on a big blitz in town to get additional foster families. We received twelve applications, eleven from non-Native families and one from a Native family. It is nice to have the eleven, but who knows where they are going to be in six months. It is very, very difficult to get people who are permanent residents involved in foster parenting.

Comment **Member of Audience.** Another potential problem is that, in the Inuit culture, when you adopt a child, it becomes yours by custom. In Inuit culture, you do not become involved with other people's children. There is no concept of taking children into your home and looking after them temporarily. So, in addition to providing housing and training and finding suitable foster parents, this cultural reality that people do not look after others' children has to be addressed.

Comment **Member of Audience.** I am a foster parent in the north. If I waited for researchers to come to my house and do a case study, I would wait forever. In all the years we have been foster parents, no one has come to our home. We could be beating the foster kids and no one would know. Foster parents are involved in so many activities that you have to have functional families doing it. But the number of functional families in many northern communities is relatively small.

Response **Joe Hudson.** I do not want to minimize the kinds of challenges that would confront the implementation of specialist foster family care in northern communities. There are challenges in southern communities as well. Recruiting a home is a problem in Edmonton. But it can be done. I firmly believe that it can be done, even with all of the challenges and difficulties. Perhaps not as easily in a community of 200 people, but even there, it can be done. Three communities in the Northwest Territories have institutions and foster family care would be a better alternative. Residential programs are very expensive and they are not natural environments for young people.

There are also shelters for women and their children in these communities. While there should be shelters, we can't keep building shelters on every street corner because of costs. Yet spouse battering is a serious problem. Why can't we use family care? Perhaps the women could go to a shelter for a short period to get over the immediate crisis—five days at the very most —and then into family care with a specialist foster family. This is already being done with homeless mothers and their children in the United States. Why can't we do it with abused women and their children?

Another implementation issue is how to recruit people committed to dealing with the types of young people and adults that you want to place in care. It is important to be very clear with people about their job expectations and the challenges they are expected to deal with. Otherwise, they're being set up for disappointment and failure.

The implications for existing agencies can be complex. If there are separate agencies involved, there will be some tension and careful public relations work with the agencies in the existing network will be required. More experienced foster parents from existing agencies will leave to take on the new work as specialized foster care parents. Foster parents should have this option of moving into a new program and a new role.

My experience working with families in communities is that, while they may appear to be dysfunctional, they often have strengths that can be developed. Many intensive home intervention programs, now under development throughout the world, reflect the view that even apparently dysfunctional families have strengths. The challenge is identifying, mobilizing, and using those strengths. This same notion might be applied to communities that, on the surface, appear to be dysfunctional. Perhaps we are missing the strengths of those communities.

Response **Member of Audience.** That is an important idea. When we have foster home applicants, we do a home study to ensure they don't have major difficulties. We often place kids in brand-new foster homes

In one case, an eight-year-old boy, traumatized from childhood by being sexually abused by his mother and her partners, was placed in foster family care. The social worker trained new foster parents to care for this very difficult child. The child could have been put in an institution; he was that bad. Now, fourteen months into the placement, the foster parents are adopting the child. It is very time-consuming to identify and train new foster parents, but it pays off. It did for this boy.

Perhaps we are not opening up our eyes wide enough to see the possibility that there are potential foster parents who, with proper training, would be really good. Remember how many years it took those of us who are professionals to become skilled at what we do. The same applies to foster parents.

Comment

Member of the Audience. Involving the community and developing a community support network is a very important part of this process. Our community is one in which there is very little involvement in social service delivery. There might be retaliations or reactions to situations, but no proactive involvement. Very few child welfare cases are brought to the court, but over the past two years there were two cases in which children were apprehended for possible assault by the parents. And these cases went to court.

One of the issues in this Inuit community was whether the parents had abused the children or administered acceptable discipline.The Inuit Association went to court and made a presentation to the judge, saying that black eyes on a ten-year-old child was considered acceptable discipline. So the court backed off. Although I didn't agree with the outcome of these cases, the parents did involve the community. Obviously the potential is there for community involvement. But it is very hard to activate, hard to get discussions going, and especially hard to get people to see things through "modern day lenses" as opposed to their traditional views.

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20

YOUTH SUICIDE AND PROBLEMS OF MODERNIZATION IN GREENLAND

RESOURCE PERSON

Jorgen Thorslund, Assistant Professor, College for Social Workers, Denmark and Greenland

This discussion of suicide and modernization focuses on developing a general theory that can explain the extremely high numbers of suicidal deaths in Greenland.

INTRODUCTION

In recent decades, suicide has been a major problem among Inuit. Young men have started to kill themselves in extremely high numbers. Although some Indian tribes face similar problems, Inuit seem to be the most vulnerable. The problems can be found among Inuit in the Arctic and Subarctic areas in Alaska, all Canadian territories, and in all Greenlandic districts. In a vast amount of literature, it has been documented that the high suicide rates represent some permanent problem and not just accidental peaks. The patterns concerning distribution on age and sex seem to be almost identical for Inuit in most areas.

We need action! This seems to be the attitude of many social scientists and social workers. Public authorities have implemented a number of programs to avoid suicide. Nevertheless, knowledge concerning the suicides is lacking and some major taboos still exist among the general population and local authorities. This fact might limit the effects of many initiatives. A study made on behalf of the Greenlandic Council of Health Promotion (PAARISA) in January 1988 tried to describe the suicide problems among the Inuit in Greenland, find some causes of the suicides among the youth, and suggest possible means to held reduce the number of suicides.

In this study, I have identified some limitations of existing studies and presented some results of my own. The main concern has been to develop some ideas for a general theory to help explain the suicides of Inuit youth in Greenland. Finally, I have made some suggestions for suicide prevention. To avoid any misunderstandings, I shall make clear that I agree with the above statement—we need action—although we lack knowledge. At the same time, it is possible to continue some further analysis, to avoid future prevention schemes becoming social engineering—technocratic manipulations of human beings—instead of help based on cultural understanding and scientific knowledge.

LIMITATIONS OF EXISTING STUDIES

The vast amount of literature on Inuit suicide quite often has important limitations in its empirical basis or the theory used to understand the suicides. To this is added that the prevention schemes rarely are based on any systematically collected knowledge, but more often are marked by the panic of suddenly finding a generation saying "No!" to the future. A panic which is easy to understand.

For very good reasons, the figures concerning suicide in most studies are based on small numbers. The problem of many suicides has developed recently and, considering the small population of Inuit, most analyses will be based on small and uncertain numbers. This can explain why all interpretations are uncertain and why most studies only include a little background information. Even occupation—a central piece of background information—is hardly ever included, while family background and living conditions are considered in only a few case studies. A demographic-statistical approach increases the material but due to problems of central registrations—either the quality of the data or the types of information collected—this does not solve all problems.

The theoretical approaches to the study of Inuit suicides are marked by epidemiological traditions of quantitative description and statistical argumentations, or by psychiatric examination of individual cases. Unfortunately these approaches hardly ever are combined in a social psychological analysis that reflects both the social patterns and the psychodynamic of the individual. Without some theory of the subconscious, from my point of view, it is most difficult to explain and understand why people commit suicide.

To this must be added the cultural dimension. Quite often culture is only understood in terms of acculturation—how Inuit adjust to modern western civilization—while the cultural differences between Inuit and white men and their differing psychology are interpreted in terms of individuality or ignored as hardly relevant. In opposition to this approach, anthropologists are most critical towards the imperialism of western culture, and they obviously interpret the suicides in such terms when they do their field work in local communities. The problem of this different approach is that it tends to forget the complicated character of modernization. Quite obviously, modernization includes suppression and transformation of cultures in the third and the fourth world, but at the same time it can give the same peoples hope of less vulnerability towards nature, new liberties, and development of a new individuality. New ways of organizing and new political patterns may also give means to survive. As a result, people do not have to stick to defensive and self-destructive reactions, but can react more assertively and constructively when, for example, oil industry and mass media are transforming the interior and the exterior environment of the village.

Prevention initiatives quite often are influenced by some sudden solutions when a suicide epidemic hits a village or a district. People call for action. Restrictions on alcohol consumption, telephone lines open for youth in a crisis, and programs that fly in psychologists and social workers, hardly seem to give any results on a long-term basis. Most promising might be programs that focus on the community, while other programs introducing youth to traditional cultural techniques, building Qajaq, or handling furs may overlook that the Inuit youth are facing some problems not found in the traditional culture.

A STUDY OF INUIT YOUTH SUICIDE

This project has tried to overcome some of the above-mentioned problems by using a number of different methods of qualitatively and quantitatively types. The first phase included collection of information from a number of public files concerning all suicides in Greenland from 1977 to 1986, a total of 403 suicides. (Some planned interviews among ten to fifteen persons who had survived suicide attempts failed due to limited financial resources). The second phase included interpretations and traditions of suicide among Inuit, as found in traditional tales, in modern prose, poetry, public debate, and in a nationwide questionnaire distributed to youth aged fifteen to thirty. The third phase focused on the psychology and development of Inuit youth through analysis of existing literature on socialization among Inuit in Alaska, Canada, and Greenland, supplemented by field observations from two years of teaching among students in Nuuk from 1986 to 1988.

Results from the first phase indicate that suicides more often were found among youth with a casual relationship to *both* modern and traditional occupations, and among hunters/fishermen. White-collar workers and the self-employed commit suicide less frequently. Suicides often were found among youth from families with a traditional occupation and among singles with no children. A majority of the suicides seem to have faced socially traumatic experiences in their childhood. Adoption to a new family, on the other hand, did not seem to be of any importance. Differences between districts indicated, although with some uncertainty, that less developed districts had the highest rates of suicide among youth, while more developed districts had lower rates. Almost everybody was intoxicated by alcohol when they committed suicide. Four out of five were facing some personal crisis and—a finding that support widely spread ideas about suicide epidemics—and almost three out of four could have been inspired from personal experiences with suicide attempts or another recent suicide in the same district. Of suicides, fifty-nine per cent could have and likely did observe another youth's suicide within the previous four months.

The examination of police reports showed that almost half of all suicides were committed in a most aggressive way, where the person chose to die very close to significant others such as parents, girlfriend, or friends. Some chose the police. The purpose could be to make these persons feel guilt; this observation supported the motive of communication: the young person may not necessarily wish to die but may have other motives for committing suicide.

The results from the second phase showed that one can find an old tradition of accepting suicide among Inuit in Greenland, a tradition that can be studied in tales and ethnographical observations. That one can find suicide among aged, ill, and hungry people is widely known and commonly described among Inuit. It is more rare to include the phenomenon of Qivittoq—people going to the mountains—as a suicide. These are to be found among both younger and older peoples. If a person faced great shame or anger, he or she could feel the need to go to the mountains, where some spirit might initiate the person into the realm of spirits. Later the person can return to the community and solve problems by the use of new strengths. As the escape into the mountains offers a few days to reconsider and then leads to a certain (biological death), this phenomenon is equivalent to suicide, although the motive is not death but handling the social conflict. This general attitude towards Qivittoq and other forms of suicide were marked by fear of revenge but, at the same time, acceptance of suicide as an option when problems grow too large.

This wide acceptance of suicide can be found in fiction throughout the twentieth century. In the first novel from the early century the author—a Greenlandic priest—has great confidence in the future and the making of a national identity. He therefore saw suicide—in the form of Qivittoq—as an old fashioned but generally accepted solution. The Lutheran Church obviously did not accept such violations of the Fifth Commandment, but as even the people of the church did consider the matter, a priest could write novels where suicide was seen more as an old fashioned solution than a fatal sin.

From the mid-1960s the question of suicide—both as Qivittoq and in other forms—has been discussed in almost every novel and in much poetry. The acceptance of suicide as a solution remains, but the interpretation of youth suicides changes. In the 1960s, suicide is seen as an acceptable submission, when life can't be any different. The 1970s, nationalism interprets the suicides as victims of Danish imperialism. In the 1980s, the authors change again toward understanding suicide as a sign of defeat in youth struggling to find a personal identity—some existential crisis. This wide acceptance can be found in the response to the nationwide questionnaire distributed to

320 youngsters. With the qualification of a low reply rate (forty-nine per cent), the answers indicate that few condemn suicide, few understand the suicide as sign of psychiatric disease, and the majority interpret suicide as a regrettable reaction toward some common problems of life: conflicts with a girlfriend or with parents, too much alcohol, or some personal problems.

To conclude, I will state that there is a wide acceptance of suicide as the solution, when problems grow too large. This solution is seen as regrettable, but acceptable and not necessarily a major problem or concern. Any blame—and feelings of guilt—are turned towards the relatives who "drove him into suicide." Such an acceptance is of central importance for youth with some personal problems, as it can ease the transition from suicidal thoughts to suicidal action. Thus, it may lead to suicide instead of a suicide attempt. Nevertheless, my interpretation should not lead to the conclusion that any moral criticism of suicide can reduce the problem. A moral revival can be hard to obtain, and it is likely to produce only a short-term effect as wide acceptance of suicide most likely is closely related to the basic Inuit respect of other people's autonomy. One is not supposed to interfere with other people's decisions. To this I would add that moralistic criticism of the youth could widen the gap and increase the isolation many young people feel.

The results of the third phase showed that youth as a social category is something new among Inuit. Young people among traditional hunters made the transition from child to adult when one could get a regular catch or cook and prepare the catch. This form of transition has been changed dramatically by modernization. Wage labour, mass consumption, and individualization have created a transitional period between childhood and adult. When a man biologically ceases to be a child, but needs further socialization and qualifications to be socially mature, a new category is created, youth (Inuusuttut) with specific rights, duties, and problems.

One basic consideration of this study was, that to make an examination of how young Inuit react in the process of modernization, it is necessary to have an idea of how Inuit psychology was *before* the process accelerated. On such a basis only, it is possible to analyze the interaction between the two cultures and their concepts of reality, an interaction that creates the basic framework of youth developmental tasks.

It is most difficult to find this "clean" culture. Many racist and stereotypical threats must be overcome. Most strong is the idea of Inuit living an idyllic life in close relationship to Mother Nature without any conflicts and with a "natural" relationship to their children. This faith in the Noble Savage is widespread in Denmark and the US and—what is more important—it is influencing the Inuit concept of themselves as expressed in some public statements. This could serve political purposes, but some tendencies indicate that people have started to believe this ideology. Studies from the Canadian Northwest Territories by Jean Briggs and others support the more fragmented materials from Greenland. Through comparison, it is possible to make a more detailed description of the Inuit psychic characteristics, including both holistic qualities and internal contradictions. Traditional Inuits were living—as contemporary peoples—a life of complexity, where socialization did take place in close relationship with nature, but where contradictions and conflicts were part of life as well.

By comparing the interpretation of Inuit psychic characteristics and socialization with contemporary studies from Greenland, it is clear that traditional socialization still is influencing upbringing practices. In villages in particular but in towns as well, one can still find many elements of traditional socialization in families—or at least this seems to have been the case for the young people trying to find their way in the rapidly changing society of the 1970s and 1980s. Some of the commonly spread concepts and stereotypes of Inuit seem to be supported by well-documented studies—for example, liberal attitudes in childrearing—but, in other fields, common views tend to overlook the importance of other aspects of socialization such as finding a place in the community and handling aggression.

The psychic characteristics of Inuit are basically dominated by the hunting cultures that have an ambivalent relation to aggression: it is seen as necessary only for hunting and some relations with fellow human beings. This dilemma, combined with a social structure of small family-based settlements,without formal state power or chiefs, leads to the development of psychic patterns that are dependent on and empathic toward other people's reactions and that also raise some emotional barriers to keep some distance. A fear of the loss of attachment may occur, loss of the beloved. Aggression is understood as something that must be controlled but given some expression occasionally. If not, then there is an increased risk of a psychic explosion, which can lead to attacks on fellow beings.

The ego structure is developed in close interaction with the family, mainly the mother, but with her and other relatives contributing toward this ambival-ence towards aggression, which leads to empathy, fear of separation, and emotional containment. The ego insists on autonomy but remains emotionally dependent on others. The tensions of aggressions, which need to be handled indirectly, give a latent risk of sudden explosions, manifest if the weak ego is offended. In the traditional culture, institutions have been developed—besides the central hunt—to give a number of acceptable alternatives for the expression of aggression. The question is what happens if these alternatives are removed and the tensions increased.

The concept of modernization, in opposition to both liberal theories of development and anthropological theories of interaction, can be understood as a complex and ambiguous process, which changes, breaks down, and creates new possibilities, not necessarily fulfilling all promises. The global dynamics of capitalism break down and transform, not only economical and political, but also social and cultural, relations in still more parts of the world. To this is added that the process of modernization transforms conditions of socialization and the developmental possibilities of the psychic structure.

In Greenland, capitalism was imported in the form of Danish colonialism and characterized by a policy of protection and liberal tolerance. After World War II, this policy was replaced by dynamic expansion and officially formulated modernization, supported by the Greenlandic elite. The conditions of living were changed dramatically, including wage labour, urbanization, and a higher standard of living. Some problems were reduced, but new problems arose. Among those were the problems of the new social category, youth, which had existed in low numbers since the turn of the century, but now became a common phenomenon in towns and later in villages.

Youth is a most critical developmental phase that includes a number of vital tasks concerning individual independence and identity. Inuit youth at the same time were also expected to carry out the societal transformation into modernization. But the Inuit culture had very different concepts of autonomy, aggression, and individualization. This resulted in very difficult youth identity problems. As a result, more youth problems have arisen than are found in most central capitalistic societies: problems of sexual promiscuity, alcohol abuse, violence, unfitness for work, and suicide. A common feature of these youth problems is that they all some way seek inspiration in cultural traditions, but at the same time the acting out is transformed. The results are heavy physical and mental burdens for the youth and for society. Young men seem to carry the most heavy burden, perhaps because the women have been forced to a more active strategy of modernization and at the same time keep up traditions of housekeeping and childrearing. Young males, on the other hand, only stick to traditional fields. Some similar development has been described in both Alaska and Canada.

How can suicides be understood in this context? A theory is necessary. But what demands must be fulfilled in a theory that explains the Inuit youth suicides?

DEMANDS OF A THEORY

Since Durkheim published his classical work *Suicide: A Study in Sociology*, the wide consensus among psychologists and sociologists has been that suicide is not only an individual phenomenon but in particular reflects some central social conditions. Such causes are calling for an *explanation*. On the other hand, it would be an example of sociological reductionism to make the individual only a product of its conditions without any options. The subject has a consciousness, some dreams, motives; and acts purposively, with motives, although those motives can be difficult or impossible to understand for another. This subjective meaning calls for an *interpretation*—an understanding of the meaning of the acts.

More specifically, the explanation should be capable of covering at least three dimensions and answering some questions in each field:

- cultural: why is it particularly Inuit who commit suicide in high rates?
- social: why is it young males with a weak occupational position?
- psychological: why suicide as the solution?

The interpretation should be able to include several types of meaning, including conscious and subconscious motives and the relationship of the subject both to himself and others. The act of suicide should be considered as a form of verbal and nonverbal communication.

The link between the social scientific explanation and the hermeneutic interpretation is the specific personality, that is, the theory alone is unable to explain the individual suicide. To do this, one needs to use clinical psychological approaches, which I have not tried in this project. For me, there is presently an insurmountable barrier between knowledge on an individual level and knowledge on an aggregated social level.

A THEORY OF YOUTH SUICIDE

From the classical psychoanalytic studies of suicide by Karl Menninger, convincing arguments have been put forward claiming that suicide often has an aggressive element. Menninger separated three subconscious motives often mixed up in a suicide: the wish to die, the wish to kill, and the wish to be killed. Besides the wish to disappear from this world or to go to a better world, often elements of symbolic punishment are common, where the suicide is an attack on a psychic representation of the other. Similarly, the subject can wish to punish himself for acts or thought-acts not acceptable in the culture.

The cultural dimension is central in its interaction between traditional forms and modernization forms. The Inuit culture is interfering with modernization at both social and psychological levels. At the social level, the Inuit culture represents a strong ambivalence for aggression toward fellow human beings. At the same time, modernization leads to a cultural emancipation, where traditional values, occupations, and practices are broken apart, not necessarily to be replaced by other fixed structures. On the contrary, modernization can, through its accelerated dynamic, produce still better offers in mass media, mass consumption, and employment. The interaction between traditional Inuit culture and modernization can be rather seamless in certain matters such as hunting technology—where the Inuit are more than willing to use all available technologies. In terms of social norms, however, greater problems arise. The disappearance of traditional norms, the breakdown of the family, and development of new youth in a social vacuum all lead to isolation of the individual and still more frequent confrontations. (The bargains of the shop, the employer's demand of overtime work, the friends' regular suggestions of having a little drink, all demands that one can say "No!" to keep going. This is very bad manners from a traditional point of view.)

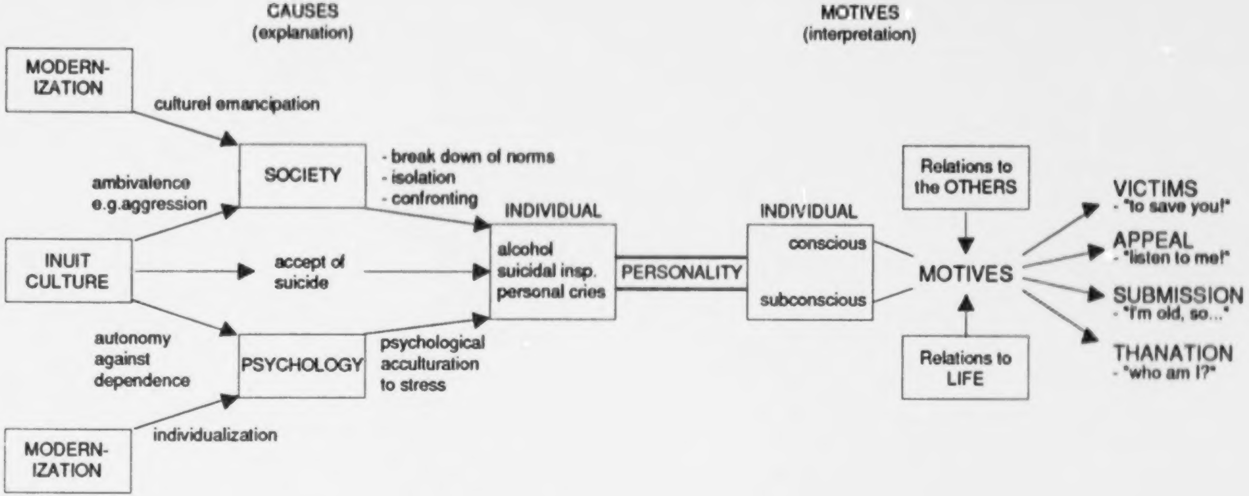
CAUSES
(explanation)
MOTIVES
(interpretation)
MODERN-
IZATION
culturel emancipation
SOCIETY
- break down of norms
- isolation
- confronting
ambivalence
e.g.aggression
INUIT
CULTURE
accept of
suicide
INDIVIDUAL
alcohol
suicidal insp.
personal cries
PERSONALITY
INDIVIDUAL
conscious
subconscious
autonomy
against
dependence
PSYCHOLOGY
psychological
acculturation
to stress
MODERN-
IZATION
individualization
Relations to
the OTHERS
MOTIVES
Relations to
LIFE
VICTIMS
- "to save you!"
APPEAL
- "listen to me!"
SUBMISSION
- "I'm old, so..."
THANATION
- "who am I?"

Figure 1. A Theory of Suicide

Young males seem to have a poor background compared to women, maybe because women have or have been forced to keep responsibility for housekeeping and childcare while they at the same time have been forced to take on a number of new occupations. The male functions have been changed as well, but they have been less likely to interfere in traditional female affairs, resulting in an even greater loss of identity.

Traditional culture represents a strong accentuation of individual autonomy, which at the same time is closely related to heavy dependency and fear of separation. As both Briggs and Lynge have suggested, the Inuit psychic character often is both strong and weak, which in interaction with the extreme individualization of modernization can lead to latent tensions and anxiety in youth. Depending on how the young person handles psychological acculturation, he can solve his own development task or risk being locked into a frustrating position. Young people who handle the modernization process in a more assertive way seem to handle stress situations better, while young people trying to avoid or deny modernization can be extremely vulnerable. Conflicts with other people seem to be most difficult to handle with this combination of traditional socialization and modern individualization.

Besides this interaction with modernization, the traditional Inuit culture is directly influencing individuals in terms of solutions to problems by keeping the suicide option open for people in crisis.

These aspects of culture, society, and psychology can lead the individual into a more or less vulnerable position. If we add to this a personal crisis—due to troubles with a girlfriend, for example—and the individual gets some direct inspiration from another suicide, showing all the public affection at the funeral, then the youth only needs the decision to get drunk to allow himself the opportunity of committing suicide. Whether this becomes the final result or another solution is preferred depends on the specific personality. Another option might be more direct aggression towards another person, physical illness, or perhaps even a mutual agreement solving the specific problem.

As this theory does not intend to explain suicide on the individual level, I shall continue to the interpretation of motives in suicide. As the work of the British sociologist Steve Taylor has been most interesting, I shall introduce parts of his theory. The basic principles of the analyses will not be discussed here, but his model is most illuminating. He suggests a two-dimensional interpretation, so one at the same time is able to conceptualize the complexity of suicide and the basic relations between the subject, self, and others. Taylor suggests one dimension, concerning the degree of certainty in the individual's experience of life. A balanced position is necessary. Too much predictability means that life no longer is to be lived; everything is fixed. There is no reason to keep on living. At the opposite, too much uncertainty does result in a life of danger; nothing is fixed. This leads the individual to seek some confirmation of his existence, perhaps even an ordeal, where life is at stake.

The second dimension concerns the relation between the individual and others. If one is too closely attracted to others, there is no protection against demands, while too much isolation and a lack of emotional relations equally creates vulnerability towards demands and emotions from "within." Combining the two dimensions, we can create a model with four main types of suicide.

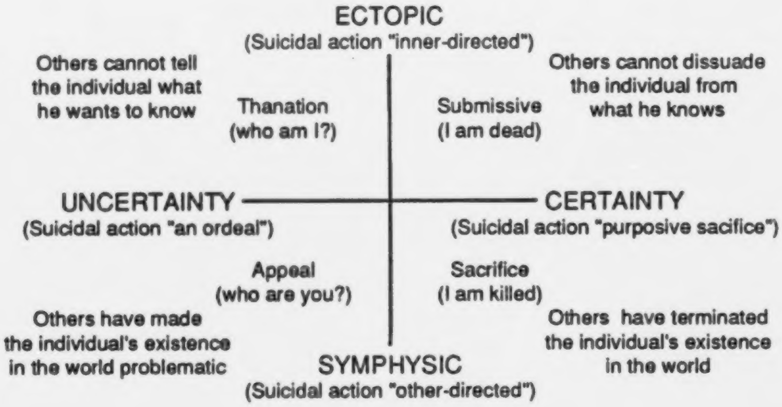
ECTOPIC
(Suicidal action "inner-directed")
Others cannot tell the individual what he wants to know
Thanation (who am I?)
Submissive (I am dead)
Others cannot dissuade the individual from what he knows
UNCERTAINTY
(Suicidal action "an ordeal")
CERTAINTY
(Suicidal action "purposive sacifice")
Appeal (who are you?)
Sacrifice (I am killed)
Others have made the individual's existence in the world problematic
Others have terminated the individual's existence in the world
SYMPHYSIC
(Suicidal action "other-directed")

Figure 2. Four Types of Suicide

In the context of Greenland, this theory can be elaborated as follows. The submissive type is suicide where persons consider life to have ended, perhaps due to hunger or disease. The sacrifice type includes suicide where the person might try to reestablish connections through death, perhaps to achieve revenge by setting up conditions so that someone else will attack the person "responsible" for driving the youth to suicide. The appeal type includes suicide where the person does not wish to die but rather to communicate and receive an answer from others or above. Qivittoq is a classical example and perhaps the modem aggressive and confronting suicide have similar motives. The final type, thanation, was rare in traditional society except for some few examples. These people were "told" to commit suicide and did so due to loneliness. This type might be of increasing importance as individual problems of existence become common, particularly among youth in an uncertain and isolated position.

With this theory and model, the complexity of Inuit suicides should be clear and should clarify possible causes, making motives more accessible. On such a basis, clinical psychologists and social workers confronting suicide problems among Inuit youth can find some inspiration. At the same time, it may be possible to discover some major fields of intervention in suicide prevention. A successful contribution demands both knowledge of causes and understanding of the motives and forces making Inuit youth choose suicide.

PERSPECTIVES ON PREVENTION SCHEMES

Several principles should be respected in prevention schemes initiated by authorities from strange western cultures. Ethically, the program and its elements should be discussed with representatives from local Inuit, who are to decide whether suicide is a problem that requires intervention. Visiting experts hardly make any permanent improvements. On the contrary, great schemes soon can fall apart, if they are not based on local forces. Self-help principles are most important and local lay persons often are better than experts from far away. These experts are more accustomed to supervision and education, as the structure of the Greenlandic legal system has shown.

Nevertheless such principles should not lead to uncritical and romantic notions of traditional decisionmaking structures, where all responsibilities are thrown into the hands of the elders, with the hope that youth will listen to their advice. It is most important to make clear that the problems of youth are based on a completely different situation, which calls for new solutions. It is just as important to include the young people in any planning. The tradition—as expressed by the elders—might represent mutual harmony, but it does not necessarily have any relevant answers to the questions of contemporary youth. The youth should be supported to develop a relationship with the elders based on critical respect instead of faithful acceptance of authority.

Prevention schemes should be considered for both the general population and the high-risk group.

General Proposal

- A debate should be supported through public meetings and media on the causes of suicide and the possibility of preventing suicide, if everybody is willing to give help to a fellow human being in a crisis.
- Teachers and social workers in close contact to youth should be trained to improve their abilities in handling suicides and personal relations among youth. This means, in particular, supporting young people in handling their own problems and problems among friends. Second, it could be to introduce personal and intimate relations as topics of school classes.
- Materials for classroom work on suicide should be produced.
- Some phone-in programs should be developed on public radio providing advice as well as demonstrating that personal problems are common and can sometimes be resolved through sharing.

High-Risk Group Proposal

- Social and health workers should be trained to improve their ability to recognize and give advice to persons in serious personal crisis. These high-risk suicide groups are most common among the clients of the municipal welfare offices.
- Local teams of two persons should be elected to establish contact with families and friends after a suicide, helping to handle feelings of guilt. Second, such intervention could reduce the very high risk of suicide among these groups. The teams could include professionals (social or health workers) or lay persons only. What is most important is that

somebody take initiatives to talk about emotions after the suicide. This is not normally the case.

- In connection to this, contact could be established for mutual benefit with other victims of suicide.

These proposals were made in the summer of 1989. What's been the result? At this moment in August 1990, no initiatives have been made for the high-risk groups. But the general proposals will begin in part. Some results of this study have been published in radio and newspapers. Some material for public debate has been developed that is about to be distributed nationwide in the magazine of the Greenlandic Board of Health Promotion. In this material, two questions are raised: do people want to accept suicide as a solution for themselves and each other? And do people want to keep up the tradition of not talking about personal problems and not interfering with other people's problems?

Besides this, in 1989, some public theatre and a large-scale radio program improved the public debate on youth suicide. This was arranged privately but was inspired by the original initiative of the Board of Health Promotion. Also, in one district with a large suicide problem, a public meeting was arranged but not followed by further initiatives.

Whether these schemes will reduce the number of suicides is another question. The future might give the answer.

21

PREVENTING FAMILY VIOLENCE IN NORTHERN COMMUNITIES

RESOURCE PERSONS

Sandy Bryce, Assaultive Husbands Intervention Program Manager, Department of Justice, Whitehorse, Yukon

Debra Dungey, Family Violence Prevention Unit, Department of Justice, Whitehorse, Yukon

Lynn Hirshman, Faculty of Social Work, University of Manitoba (Thompson), Manitoba

This workshop discusses programs operated by the Yukon Territory's Department of Justice for husbands who are batterers and for women who are the victims of domestic assault.

INTRODUCTORY REMARKS

We want to have a woman's program in place and then a men's program. There must be safety and protection first for women and kids. I do one-on-one counselling, core groups for women, and advocacy. I try to be there to provide short-term counselling as opposed to long-term therapy. Some of the women I see now may have been women I connected with ten years ago when I worked at a transition home. There are some real benefits to that past connection, because they may now be with different partners, and you have a sense of where they are at and how you can best support them.

In the women's group, we want to get women talking to other women. And then everything can flow. In the group, you start with the pre-group interview, designed to check out the woman's safety; that is, to find out if her attendance at the women's group is going to be a threat to her partner. We try to be practical about how we provide support. Sometimes the group can't assist her at that time, so we do one-to-one counselling. Or we'll go to court with her, if that's involved. I always try to be as practical as possible—realistic at the same time—and say this process may be difficult. I always like to look at what she is doing right now. To see whether she is in control. Women often underestimate the things that they are doing.

We have what we call *goal sheets* for the women. They are used as a tool to help them focus on what they might want to look at over the next eight to ten weeks in the group. This procedure also provides us with direction about the areas women want to look at. Issues surrounding anger always come up; dealing with emotions and past abuse.

The women's group is a closed group rather than a drop-in group so that we can establish trust. We do a check-in at the beginning of each group session. Sometimes that's the first hour of the evening; sometimes, it is much quicker than that. And then we usually have something prepared each evening, although we try to go with the needs of the women in the group at that time. There may have been an assault in the past week; just anything that seems to be current in the community.

The other reason for the pre-group interview is to get a sense of the commitment the woman feels she can make. It's a really big commitment, participating for that length of time. Participating in the group takes the woman away from her family and from her husband. Their partners may feel threatened by that, and so we really need to check that out with them. Or there may be other things that are happening in their lives. We need to know what are their priorities.

We never have a problem getting enough women for the group, although every group is different depending upon who is in it. The women learn from each other; they really share their experiences. When they come to the group the first evening, it's often a profound experience for them—seeing other women from the community whom they know. As part of my job I also go to the men's group, which is always different, too. There is no fee for men or women to attend these groups. It is offered within the Department of Justice. The women come on their own, or they may be partners of men who are in the assaultive husbands program. Many are referred by social service agencies, but many also are referred by doctors, mental health workers, and various counselling agencies. We have an agreement with our counselling agencies that they will not do any couple counselling at all. The first time a couple comes in for counselling, we'll check if there has been any violence in the family. One woman had her jaw broken open in counselling. The same caution applies to mediation. I will not mediate. I will say I will check it out first. And if there has been any violence in the family, the couple is referred for an assessment. Most of the couples have been screened prior to counselling.

Comment

Member of Audience. The justice problems that Native people face are social problems. They are a consequence of the huge difficulties that have afflicted Native people, such as residential schools, a history of oppression, sexual abuse, physical abuse, and neglect. People have recognized that we do have social problems in our communities, but only the symptoms have been addressed. Groups like the Gitksan people are arguing that Natives and non-Natives have a great deal of knowledge that could help deal with these problems.

As a Native person, one of my great frustrations is that ownership of problems has been taken away from us. And in the process, problem-solving has been taken away from us. Government agencies and their services have created dependency on government programs and services. But Native groups and their leaders have also contributed to this situation by allowing things to remain at status quo.

Many of the programs haven't worked because there has been no Native involvement and the programs do not fit the needs of Native people and their communities.

The Gitksan people of British Columbia have taken the initiative to deal with their social problems. There's a social structure. We have identified our problems. Generic program models do not work. There are so many different Native groups in Alaska and in Canada. All Natives may have brown skin, but all Natives are not the same. They are all different, distinct, and separate. You cannot have a blanket program.

The western justice system does not work for us. And the same applies to programs for family violence.

Comment **Member of Audience**. One of the major problems in northern communities is that women who have been the victims of sexual assault are often forced to stay in the community.

Comment **Member of Audience**. Another problem is that northern services in the provinces are bureaucratically based in the south. The southern mentality and southern bureaucrats make the decisions. Then the north has to live with the decisions—and they frequently have absolutely no relevance to the world of the north.

While it is outrageous to require social workers in Winnipeg to have caseloads in the hundreds, at least the social worker knows that those 200 people live within a bus ride. If a social worker in the north has a caseload of 200, some of those people could be as far as 500 or 600 miles away. This issue has to be addressed.

Comment **Member of Audience**. One of the most important considerations is the safety of the woman. Perhaps the woman does leave the community. What happens when she comes back is almost as important. There may be negative feelings toward her for having left. This year we renovated a trailer as a temporary crisis centre for women who are being abused and battered. We are still trying to change the attitudes of members of our community, especially the elders who often view women in traditional gender roles.

Comment **Member of Audience.** The biggest problem, in many instances, is not lack of funds, but lack of coordination. With proper coordination of these types of programs, there might be enough money to go around. Even after monies are made available for programs and services, there are bureaucratic obstacles to overcome. Some bureaucrats say, "Your building doesn't meet our expectations, so you can't have the funding. You can't do that program in this building. Get another building and we will look at it again." Or they will say, "You don't have any trained people. You don't have this. You don't have that."

We wanted to run an outpost camp for young Inuit offenders. Who better than us to teach our Inuit children their culture? We wanted have the children learn how to trap and hunt, how to use rifles safely. But we were told, "Oh, you don't have telephone contact or running water and toilets out there. So you can't do that. That doesn't meet our safety or health standards." Who are these government people to tell us how to run an outpost camp, when we have been raising tents and living on the land all of our lives? We have to stop thinking the way we are told to think by the government and start thinking creatively on our own. We have a philosophy: *It is easier to get forgiveness than permission.* That's the way things happen sometimes. You can always plead innocence. Say, "Oh, we didn't know." We have to stop simply waiting for the government to give us permission to do things.

We have to get people to volunteer to take people in need into their homes for a few days. If we are not going to get housing approved, then we should set up some safe homes. These situations can be dealt with in creative ways—at least for the short term.

Comment **Member of Audience**. Women are scared that they are going to lose their houses. So they don't say anything until an extreme incident occurs. Then they don't have much choice but to leave. A month ago, I personally kicked a woman out of her house. Had she spent another minute there, she probably would have been killed.

Comment **Member of Audience**. Another problem occurs when a woman does everything you ask of her. A woman in our community who was raped went to the police station with her clothes ripped. She went to court and two women testified against her, saying, "No, we didn't hear her yelling and screaming. We don't think she was dragged home from the bar." To make matters worse, the accused had moved into her apartment building. He lived across the hall. She tried to commit suicide. All the community was up in arms wondering why she tried to commit suicide. I know that's an absolute worst-case scenario. But it happens — particularly in small communities.

What woman who knew of that case would ever go to the police? We encourage women to follow the system, but it only seems to make things worse. We have to decide whose system we are talking about. For me, that is always a dilemma. I try to be realistic with women about how difficult getting through the system will be. How there's going to be shit, lots of shit, along the way. That this is only the beginning. I tell them that, any point along the way, we can stop. We have to be clear about why we talk to a woman about laying charges. I ask myself is it because of some need that I have. Or is the need hers? I try to have things come from her need. And, if she doesn't choose to go through the system, what does that mean about the work I do?

Comment **Member of Audience**. I don't think it's fair that they hold women to a higher standard. We are talking about community awareness and education. The issue of battered women is only ten- or fifteen-years-old. Ten years ago, you could buy a certificate in stores in the United States that said you were a wife beater. So we have made major strides. But, in many communities, there haven't been any strides.

In Alaska, we have a great deal of money but it is never enough. The state puts almost $5 million per year into primary funding for spousal assault programs. In urban centres such as Fairbanks, there's a comprehensive program for male batterers and other groups, as well as a shelter. These urban programs are also expected to do outreach into the villages.

So, one or two staff people do outreach. They can't be in the village all the time. But, by the same token, people in the villages are going to know the same person. Every effort is made to have outreach workers from the culture of the people being served. So, somebody from Fairbanks or Chicago isn't going in, saying, "This is how you should be dealing with domestic violence." We have seen strides made in communities where, five years ago, they wouldn't even have let anybody in. We are now beginning to do community education. We want our kids to learn to be non-violent.

We have also started safe home programs in communities. In some communities, people feel the community is too violent to have a safe home. It is real scary. In others, the village council has said, "This is our safe home. We are going to protect it. If you violate this safe home, then you are violating the law of our community."

I am the government. I am a funding source. My biggest dilemma is how to choose between the shelter in Anchorage that serves fifty-five to seventy women and kids per night—it's always filled beyond capacity and short of staff—and the needs of a small village that has three or five or ten women with no services at all. The money is never enough to go around. Although Alaska has made some real attempts to try to provide services, it doesn't even begin to meet the need.

One relatively inexpensive solution is community training. Sending a trainer around to all the communities to train local people would cost a lot less. That's just one salary and some travel money, not a whole lot of salaries and a whole lot of capital expenditures. I'm pushing for that, because I'm also an adult educator. Because I've seen that approach work, I would really like to see some dollars flow in that direction. Many communities and Native bands already have the infrastructure in place. What is required is people in the community who can make it work.

Comment **Member of Audience.** As much as I and my co-workers want to intervene in domestic violence situations, we are told by the upper echelon that we have to be very careful. We want to help women but we don't have a shelter in our community. We have a network of safe homes, but we have had some cases where the women don't feel they are going to be safe in those homes. They want to be relocated elsewhere.

I am all for that, but we are told to be careful because we can get into custody disputes. We can't take with one hand and give with the other. If we help a woman leave town, the husband is going to charge that we assisted in the kidnapping of his children. And we have problems when we place a woman in our community in a shelter, and she says, "I want my children, I want my children. I'm afraid for them, too." So we check the situation at her home and the man is not violent towards the children. He is not doing anything wrong. We cannot take those children out of that home. So more often than not, the woman goes back. Then, when she asks for help again, people say, "Why help her? She goes back anyway." More education is needed in that area, because people in the helping professions often don't understand the whole cycle of violence. They just say, "She has left five times before. Why are you wasting money by helping her again?" My response to that has been, "I don't blame her." How can you blame her when she left?

> Look at the alternatives out there for women. No education. She has to live with relatives because the community doesn't have another house and is already overcrowded. She moves in with her sister and her four kids. Soon, her kids and her sisters' kids are fighting. So what if you get smacked around every now and then? You know, that's not so bad compared to what you are facing out there.

THE ASSAULTIVE HUSBANDS PROGRAM

Sandy Bryce

There has been some controversy over the name of the Assaultive Husbands Program. People say, "Why do you have to call it the Assaultive Husbands Program? Why don't we call it New Beginnings or New Horizons or Tomorrow's Bingo?" We call the program that because that is what it is. When the men say those words, that they are attending the Assaultive Husbands Program, that's the very first step toward saying what is happening at home and what needs to change. So we really believe in using the right words.

I run programs for men. Criticisms were also raised about that: "How can you work with those guys? Is that really important?" Yes, the programs we have are really necessary. We need to work with the whole picture. The men come into the programs through a variety of ways. One way that they *don't* come into the program is: they don't wake up one morning and say, "You know, I think I'm going to go down and see Sandy." That never happens. Men come into the program because something else has motivated them. Sometimes, it is the court. Sometimes their lawyers, for different reasons, will send them to the unit.

Some men will read the ad in the paper. Their partners will say, "You know, if you don't get some help, I'm out of here. I'm not going to stay in this relationship one minute longer unless you deal with your problem." So that is another way men come into the unit. We get referrals from a family service agency that provides family counselling. We get referrals from alcohol and drug service agencies, mental health agencies, doctors, and ministers. We also connect with the Salvation Army Adult Rehabilitation Centre and with its alcohol treatment program. So we have lots of interaction with all the agencies. We're still working at developing ways of having more.

When most men come into the group, they really don't know why they are there. It is hard for them to come in, sit down, and talk. They often say that they want to talk about their partner's problems but not their own. The best approach is to bring together men who have similar problems in dealing appropriately with anger and violence. On average, there is a ten per cent drop-out rate amongst the men who attend the program; even though they may be under a probation order to attend the group, they may still quit.

Men are very threatened by the idea of going into a group where they are talking about home. However, ultimately it is very rewarding. Often, men will rearrange their work schedules and the group becomes a special time for them. Once they come into the program the men realize that they have a problem that a lot of men have—not just Native men, but teachers, lawyers, and doctors. The program is offered on Monday and Wednesday evenings, 5:30 to 7:30 PM, and lasts for ten weeks. During that time, we examine what happens in relationships, including how they get power and control in their relationships.

For a long time, programs have been developed based on what not to do. In our program, we don't talk about what not to do, but what you can do that's healthy in a relationship. The philosophy of the program is based on honesty and integrity—and getting back to some sentimental values that society has really gotten away from. Part of the challenge of the program is that the men will talk to other men about their group or behaviour. That's an exciting part.

In the group, we settle problems and issues all the time. Everyone in the group must decide that they want to be there. This means giving up some power and sharing it. The men examine how they personally get power, where they fit on the triangle: at the top, with power, or at the bottom, without power. Where do they fit on the triangle at home? At work? In their families? Then they answer questions such as what they must do to stay in those positions. Who gave them permission to be there? It is interesting because people at the top are always feeling very threatened by people at the bottom and keep pushing the people at the bottom down. They are so threatened by what might happen.

Often we have roleplaying to explore a particular issue between a man and his partner. This procedure may help him look at ways to solve his problem; to learn new behaviours other than violence and aggression. Since, for these men, relating to a woman is very important, it is crucial that a woman be in the program.

Now that the group has been in operation for several years, we are having some men come back, saying, "I need a tune-up. It's been four years since I've been in the program and, and I'm starting to get a little worried; things are starting to get out of control." I know how hard it is to change. I've tried to change some things about myself. So we know it is really hard for a man to do that as well.

Comment **Lynn Hirshman.** I'm the Director of the Faculty of Social Work at Thompson, Manitoba. I've been on the front lines and I've been in private practice as a therapist. I've done family therapy, working with dysfunctional families and families where there has been violence. Ten years ago, nobody talked about child sexual abuse. Then, suddenly, people started talking about it, talking about their own experiences as survivors. Then there were programs to teach children how not to be victims of child sexual abuse. Now there are sexual abuse prevention programs in most schools in western Canada.

One thing that adult victims and batterers have in common is low self-esteem. My thinking was that perhaps we should establish a program for children to develop their self-esteem. If people feel good about themselves, they won't beat up other people and they won't let others beat them.

Comment **Anne Kennedy, Labrador.** As a probation officer, my focus is quite narrow. One of the issues I deal with is how to give some power back to people on probation, the majority of whom are male. Among the Inuit with whom I work, there is a great resistance to having a white person help them: "Tell me what you want me to do. Tell me what I have to do." So we play this game of throwing the ball back and forth. That's one issue I struggle with.

The other issue is coordination with other services. I am part of my community. I live there. I have been there for a year-and-a-half, and plan to live there longer. What responsibilities do I have, as a human being, to play a role in the development of a male battery program?

Response **Lorna Doerkson, Saskatchewan.** Our program at the Gabriel Dumont Institute is highly legalistic and I find that somewhat of a problem. We want to do things in a broad context, but we are often not successful in that.

All of our students are aboriginal males. Virtually all of them have experienced family violence, and I feel that in our program we do very little to help our students develop an understanding of their past. They have not come to terms with their own family violence and the problems that they are presently living with. As teachers, we see our students experiencing things. We see our community experiencing problems, and, if we are only going to use one approach—a legalistic approach to try to deal with these problems—we are only going to resolve these problems partially.

Comment **Lawrence Barkwell.** I work with Community and Youth Correction with the Department of Justice in Manitoba. We operate two men's batterers groups. We also have a relapse prevention group. We have been programming in the family violence area for about eight years. The relapse prevention group is run by the program graduates; the group is supported by various agencies including family and probation services.

We run sexual offender groups for young adolescents, older adolescents, and men. There are also five open-custody homes in my region. These homes, all operated by aboriginal men and women, are oriented toward treating adolescent sex offenders. We also have volunteers from the community working with us as co-therapists.

As everyone realizes, there are very few resources. We take help from wherever we can. If there are interested people, we try to train them to do this work. They'll come in and sit for a year as a participant observer. They don't observe for long. They start participating very quickly. Our model involves male and female co-therapists, aboriginal and non-aboriginal co-therapists as well as volunteers. Three aboriginal staff in the office are also planning to start a teen violence group. That's what we'll do next.

22

CAUSES AND REMEDIES OF INTERPERSONAL VIOLENCE AMONG GREENLANDIC INUIT

RESOURCE PERSON

Finn Breinholt Larsen, University of Greenland, Denmark

This account describes rapid social change in Greenland over the past few decades and its impact on Greenlandic Inuit.

INTRODUCTION

Growing public concern about aggression and violence has sparked off extensive research on the subject, leaving a patchwork of theories and empirical findings in its wake. Unfortunately, no unanimous answer has been reached on the most basic question, "Why do some people sometimes behave violently?" Trying to answer the same question for a specific group of people in a specific social and cultural context may therefore seem a bit premature. However, I am afraid that the problem is too serious for attempts at solving it to be postponed until a theoretical consensus has crystallized at some distant point in the future. The following reflections on violence among Greenlandic Inuit must be seen in this perspective.

It is my hypothesis that the high prevalence of violence in Greenland today is caused by an adverse interaction between salient features in traditional Inuit culture and new elements in the social life of the Greenlanders brought about by the rapid social change during the past few decades. As a consequence, a successful strategy for prevention and control of violence must take "internal" as well as "external" factors into account.

HOW SERIOUS IS THE PROBLEM?

A grim record was set in 1990 in Greenland's criminal history with a total of twenty-three homicides being committed including a serial killing of seven persons. In recent years an average of twelve to thirteen homicides have been committed per year in Greenland and, with an indigenous population of only 45,000, this links Greenland to cities like Miami and Detroit, notorious for their high homicide rates.

In Table 1, the rate of homicide, attempted homicide, violent offences, sexual offences, and suicide are compared to the corresponding Danish rates. Due to differences in criminal law and statistical conventions, no exact comparison is possible, but the figures indicate the scale of the problem with the rates of the most serious offences (murder and attempted murder) approximately twenty times higher in Greenland than in Denmark. Although no age-specific offence rates are available, a "pseudo-rate" based on total numbers of offences divided by the population aged fifteen to twenty-nine still leaves Greenland with rates of homicide and attempted homicide more than ten times greater than the Danish rates.

Table 1. Comparison of overall rates of Violent Offences and Suicide

	Greenland* 1985-1990	Denmark* 1989	Number of times Greenlandic rate greater than Danish
Homicide	29.8	1.5	20.4
Attempted homicide	73.7	3.6	20.2
Violent offences	1096.3	200.4	5.5
Sexual offences	790.3	50.6	15.6
Suicide	138.5	26.0	5.3

** Rate per 100,000 population*
Source: Adapted from Politimesteren i Grønland 1985 - 1990 and Statistisk Årbog 1990.

Because of massive under-reporting, the official records of interpersonal and self-injuring violence only represent the tip of the iceberg. A study based on a registration of all casualties treated in the hospitals of Greenland during the month of November and December 1983 reported that more than one-third of all casualties treated in the hospitals were caused by violence. Compared with similar accounts from Denmark, the injuries are usually relatively serious. Most of the perpetrators were younger men under the influence of alcohol, with women between twenty and twenty-nine years as the predominant victims. It was estimated that the incidence of violence directed against women was twenty times higher than in Denmark.

TRADITIONAL CONFLICT MANAGEMENT

What is important about conflict is not its occurrence as such, but how people attempt to deal with it. Traditional conflict management among Greenlandic Inuit was based on personal restraint. It was deemed very important to avoid aggressive encounters with other people. The ideal was to keep a stiff upperlip in tense situations, suppress irritated feelings, and avoid hostile expressions. Most conflicts were dealt with in an indirect manner such as talking ill of a person behind his back, covert use of sorcery, or antagonists simply moving away from each other until tempers cooled. Songs could be used as a more direct way of airing grievances, either in the form of joking songs or as song duels. But again, it was a very restricted form of verbal exchange. The target of ridicule was expected to stay cool as the song was delivered and possibly retort in the same vein.

The careful avoidance of direct confrontation has, since the earliest contact between Greenlandic Inuit and Europeans, led to the stereotype of "the peaceful Eskimo." But it is important not to confuse a peaceful interactive style with its outcome. The non-confrontational style of behaviour has not always been particularly effective in preventing violence. Pent-up emotions now and then exploded in violent attacks. The preference for withdrawal from conflict situations meant that bystanders would seldom interfere, making a fatal outcome more likely. Usually, no community action was taken against the perpetrator of murder but, occasionally, a revenge killing occurred—sometimes years later—as a private redress for the damage done.

The most detailed accounts of violence among Greenlandic Inuit in the early contact period come for East Greenland. The East Greenlanders living in the Ammassalik District were discovered in 1884. Ten years later, a trading post and a missionary station was set up in the area. Within this short span of time, nine persons were killed: two were stabbed to death and seven were harpooned while they were out hunting in their kayaks. To this can be added a number of attempted murders. In this period, the Ammassalimiut numbered, on average, roughly 300 people, so that the above represent, by any standard, a high frequency of violence. This picture of a society where violence was rampant is corroborated by several detailed accounts taken down from local sources.

Similar, yet not so detailed accounts exist from the early contact period in West Greenland. In the journals of Poul and Niels Egede, nine killings of alleged sorcerers are mentioned from 1732 to 1741, that is, nearly one killing per year among a population numbering only a few thousand people. These figures must be considered as incomplete, however, since only two Danish colonies were established in West Greenland at that time, with the result the greater part of the Inuit population did not have any regular contact with the Europeans.

There are several accounts of people whose lives where threatened on account of being accused of being sorcerers who later saved themselves by escape or by intervention of the Europeans. Instances of blood vengeance and escape from vengeance are mentioned, too. Several sources mention the conflict between "southerners" and "northerners" that now and then triggered killings.

It is interesting to note that the same contrast between a non-confrontational style of behaviour and a high frequency of violence has been observed not only among other Inuit groups but also in other simple egalitarian societies. Comparing the Gebusi of lowland New Guinea with the Central Eskimo, the !Kung Bushmen and the Semai of Malaya, Bruce M. Knauft concludes: "In all these societies a pronounced aversion to confrontation in social life is combined with an ultimate tendency towards extreme violence—a tendency exacerbated by the scarcity of sociopolitical means of responding."

CONFLICT AVOIDANCE AND VIOLENCE

A body of work that has investigated the psychology of the violent offender types has consistently identified the over-controlled personality. This person appears to be characterized by very low levels of expression of anger and the risk of committing extreme acts of violence. One explanation of this pattern of behaviour is that the over-controlled person's total failure to express anger does not produce changes in the anger-provoking environment, so that the source of frustration persists until responded to in an inappropriate and explosive manner. Or, as expressed by R. Blackburn: "For controlled and inhibited individuals ... violence may represent a last resort when attempts to resolve a situation through compliance or avoidance break down."

Note that violence is not explained solely by the personal traits of the offender. It is an interactionist view of violence which takes into account responses of other persons and effects in the environment over time. Violence is seen as the outcome of a dynamic interchange between at least two persons. Aggressive behaviour can provoke counter-aggressive behaviour leading to an escalation of aggression to a point where violence results. But, in most instances, feedback from the offended party will lead to adjustment in the behaviour of the transgressor. If this learning process is blocked, if one or both parties for a period has been covertly harbouring resentment and angry feelings, the situation may become very explosive and the slightest provocation can result in "runaway" aggression.

Perhaps these findings may provide clues towards understanding the dynamics of violent conflict in simple egalitarian societies that is why a high frequency of lethal violence occurs, in spite of a low overall incidence of aggression. The over-controlled behaviour is, so to speak, not only culturally prescribed, but is also judged to be a wise way of behaving.

In a society where institutionalized authority is minimal and personal autonomy is highly valued, conflict avoidance might well be the most rational strategy for securing cooperation and mutual support. However, there is a price to pay, and this price seems to be a high potential for serious interpersonal violence. Whether this potential will materialize or not depends not only on individual factors but on situational facts and social context. The high prevalence of violence among the East Greenlanders in the period up to the colonialization could well be attributed to the extreme isolation of this group combined with recurrent instances of famine which produced a lot of stress in the social environment. Under these circumstances traditional conflict management fell short and violence abounded.

Much has changed in Greenland since the early days of contact between Inuit and Europeans. The physical and social organization of society is radically different today. Viewed at the macro-level Greenland is a modern western society. Viewed at the micro-level, things do not look so simple. Ways of thinking have been changing, but at a much slower pace than the outside world. Traditional patterns of behaviour are reproduced through childrearing and role modelling but, at the same time, mixed up with new ones. The non-confrontational style of interaction (often described as "shyness") is still a salient feature of everyday life. I believe that it is exactly this feature which, in combination with certain specific factors in the social environment, causes the high frequency of violence.

ALCOHOL AND AGGRESSION

One of these factors—perhaps the most important—is drinking. Most violence in Greenland involves either temporary or chronic intoxication. This is hardly surprising. There is an abundance of evidence from all over the world demonstrating that alcohol is a component of many acts of violent crime. Violent offenders have very high problem-drinking rates. Likewise, a number of studies that analyzed the effect of temporary reductions in alcohol supplies due to strikes and public policies found reductions in the level of violence when the supply of alcohol was cut down. The same effect was seen in Greenland during the period of rationing (1979–1982).

Easy as it is to show the empirical association between drinking and interpersonal violence, the causal link between the two factors is by no means clear. Physiological, psychological, social, and cultural elements seem to interact in a complex way. At the most basic level, it would appear that alcohol consumption does not uniformly induce aggressive behaviour—several boundary conditions appear to be necessary in order to elicit aggression. One of these is that the amount of alcohol consumed must be relatively large. This condition is lavishly satisfied in Greenland where heavy drinking especially on weekends and holidays causes a lot of excessive inebriation.

The context of drinking can be more or less instigative of aggressive behaviour, too. Some interesting experimental studies point to a possible relationship between frustration and aggression. In laboratory settings subjects, aggressive reactions rose as a function of alcohol dose but only if the subjects at the same time were exposed to frustrating conditions. The laboratory approach to human aggression has certain limitations. Real-life acts of violence are embedded in a web of social relations and environmental stresses that cannot be simulated in the laboratory. However, still there seems to be an intriguing parallel between experimentally imposed frustrations and emotional states produced by conflict avoidance in the real world. Repressing conflict when sober could in, one way or another, "prime" a person for aggressive encounters when drunk. If this is indeed the case, then conflict avoidance and heavy drinking could produce a very dangerous synergistic effect.

There is, however, a cultural dimension to drinking that is difficult to capture in experimental settings. MacAndrew and Edgerton showed in their classic study "Drunken Comportment" how rules governing behaviour in drinking situations differed according to social group and context. Some cultures have adopted a "time-out" attitude towards alcohol whereby normal rules and sanctions are suspended during periods of intoxication. In other words, drinking creates a sphere of reduced social control. If deviant behaviour will be attributed to the effects of alcohol, people may learn that they can behave, for example, in a more aggressive way when drunk than would generally be accepted, a feature which has been labelled "learned disinhibition."

Again it seems obvious to link conflict avoidance with drinking as arising due to this "time out" attitude. Drinking bouts create the opportunity to give vent to angry feelings that it is prohibited otherwise to air. The drinking situation is dissociated from everyday life and transgressions excused on the grounds that the perpetrator was drunk. Much alcohol-related violence in Greenland lends itself easily to this interpretation. Consumption of alcohol is often attended by a "wild" drinking style where boisterous but friendly interaction is suddenly interrupted by quarrels and brawling. Loss of memory is often reported by offenders when trying to account for the events leading to a violent incident.

There seems to be no contradiction between the psychological and the cultural explanation of alcohol consumption's effect on aggression.

SOURCES OF STRESS IN THE SOCIAL ENVIRONMENT

So far I have concentrated on traditional conflict avoiding behaviour and alcohol use. I think that much of the violence taking place in Greenland today is rooted in the adverse interaction between shying away from dealing with conflict of everyday life when sober and an even stronger urge to confront these points of conflict when drunk. Nevertheless, violence does not come out of the blue. In the following section, I will point to some common sources of stress in Greenland today that generate interpersonal conflict.

Jealousy. Moving in and out of intimate relationships is a typical jealousy-provoking act that can be a powerful source of negative emotions. A recent study on sexual habits among women in Nuuk, the major city of Greenland, indicates that on average the number of sexual partners is very high. Of women aged twenty to thirty-nine, 30.9 per cent reported that they have had twenty to thirty-nine partners, while 22.4 per cent reported they had had forty or more partners.

Jealousy is a common cause of strife between married as well as unmarried couples all over the world. Kingsly Davis described jealousy in terms of the violation of sexual property norms. These norms are culturally defined and so the prescribed behaviours to protect them against violation. Attempts have been made to differentiate jealous from non-jealous cultures. There is nothing suggesting to me that Greenland belongs to the non-jealous end of the scale and it seems therefore reasonable to conclude that frequent changing of partners is a constant source of conflict contributing to the high rate of male-male as well as male-female violence.

Changing gender relations. Jealousy is not the only cause of discord between intimates. The microcosm of a close relationship harbours all sorts of conflict and, like all social systems, it is invested with power. The traditional family reflects an arrangement of domination by males with the use of violence as a form of ultimate resort aimed at inducing the spouse to perform according to some wish. Even among the peace-loving Greenlandic Inuit of the past, wife beating was tolerated as disciplinary device signifying male dominance in the family. In East Greenland, some men were in the habit of stabbing their wives in the legs just above the knees inflicting severe pain without crippling the target.

As already mentioned, wife beating is very widespread in Greenland today. It is difficult to tell to what extent this reflects the survival of traditional wife-husband relations and to what extent it reflects turbulence created by the wavering of traditional authority patterns. The normative expectations to men and women are undergoing rapid changes in these years. The recasting of gender relations where the husband feels his traditional status threatened is no doubt a major source of friction in male-female communication.

A study on wife beating in Nuuk by Sørensen concludes "that wife-beating may be seen as a likely outcome of the inconsistencies between traditional Greenlandic values emphasizing parenthood and paternal authority as well as prestige (social value), and historical development depriving many male Greenlanders of the possibilities of fully meeting cultural expectations. Wifebeating may thus be interpreted as a male attempt to insist on preserving certain values and privileges."

Studies of the effects of social change on family violence from other parts of the world suggest that the shift from male-dominant to an egalitarian order is a multigenerational process, with the frequency of family violence likely to rise first and then drop during the process.

Sex identity conflicts. Cross-cultural psychology has pointed to a paradox in the upbringing of boys in societies with a very explicit masculine role: every tough guy spends the first years of his life tied to his mother's apron strings. Even though he must learn a very specific male role, he starts off developing a cross-sex identity because of the close contact with his mother and other females. Thus, the acquisition of the male identity is wrought with difficulties, and the male adolescent develops a need to adopt demonstrably masculine behaviour. This kind of aggressive "gender-marking" includes a variety of forms of interpersonal aggression displayed by male adolescents, and among the older males whose habits of behaviour were first established during adolescence.

The traditional Inuit culture with its sharp sexual division of labour, prolonged breast-feeding, and prestigious male role seems to have been a hothouse for sex-identity conflicts. However, because of the norm favouring non-aggressive behaviour, the conflict had to be lived out particularly through hunting and rough treatment of spouses. To strike a balance between the fierce conduct of hunting and the subdued conventions of social life is no easy task. The oral Greenlandic tradition is studded with machos of incredible strength, bravery, and brutality who did not manage to strike this balance.

The uncertain and contradictory expectations toward the male role in today's Greenland has not made the passage to adulthood easier for the young male. Many Greenlandic men seem to have a role problem. Brought up in a culture that is still characterized by a wide but rapidly narrowing gender gap, one strategy to follow is to cling even more to the traditional role model. In combination with alcohol consumption the urge to demonstrably masculine conduct sometimes produces dramatic consequences with violence, rape, and self-injuring actions as frequent outcomes.

Drinking. As already mentioned, alcohol is an important situational factor in most violent incidents in Greenland. Moreover, when drinking is a central activity in a person's way of life, it also becomes a central source of stress creating all kinds of problems of social and personal disorganization: absenteeism and instability at work, child neglect, loss of self-esteem, and psychological disturbances. This process feeds back on itself because heavy drinkers tend to seek out people and situations that evoke and stimulate drinking. Consequently, families where one or more members are heavy drinkers experience high levels of stress and are more likely to erupt in violent behaviour. Though the coverage by relevant statistics is poor, social problems caused by alcohol are an all too conspicuous part of everyday life in most Greenlandic communities.

A POLICY AGAINST VIOLENCE: SOME SUGGESTIONS

To design a social strategy intended to reduce interpersonal violence is not an easy task. Reshaping deep-seated attitudes and patterns of behaviour is a slow and tedious process where no "magic solution" is at hand. However, the problem has assumed proportions that calls for a definite public policy. I have focused above on two critical factors that make personal interaction among Greenlanders violence-prone: drinking behaviour and conflict avoidance. In my opinion a policy aimed at reducing violence must take these as a starting point.

Changing drinking behaviour. I will distinguish four strategies aimed at changing drinking behaviour: restrictions on availability, education, symbolic politics, and treatment.

Until 1954 sale of alcohol in Greenland was restricted to the Danish colonialists and a few privileged Greenlanders. As remarked by Robin Room: "Colonial restrictions on alcohol for Native populations have left an aftermath of symbolic identification of drinking with personal emancipation and cultural autonomy." This, combined with the high post-1954 jump in consumption following liberalization, has caught Greenlandic alcohol politics in a crossfire between proponents of a "wet" and "dry" control strategy. In the aftermath of the inception of home rule, rationing was introduced on 1 August 1979, only to be abolished twenty-one months later and replaced by a public information campaign urging voluntary moderation.

Both before and after the period of nationwide rationing, this measure has been used on either a temporary or on a more permanent basis at the local community level. No systematic study has been done evaluating the effects of nationwide and local rationing but the overall impression is that alcohol-related problems have been reduced as a correlate to reduction in consumption. This impression is consistent with a fast growing body of evidence in international alcohol research pointing to the effectiveness of restrictions on availability of alcohol in the prevention of alcohol-related problems.

However, there is a delicate balance to strike between the short-run and the long-run effects of restrictions because effective short-run measures can prove to be counterproductive in the long run. Too restrictive measures tend to produce an inexpedient "stop-go-policy" and may create a generation of "protest drinkers." It seems to me that a wise way to go about solving the problem is to reach a political consensus on a reasonable yearly rate of reduction of the overall level of alcohol consumption and then, choosing from a wide range of measures documented to have had positive results in other countries (for example, tax changes, changing the legal minimum drinking age, reducing hours and days of sales, reducing number of sales outlets), orchestrate policy measures to meet this target.

Contrary to restrictions on availability, educational approaches to influence patterns of alcohol consumption including mass media campaigns have a poor record in the research literature. There is no reason to believe that the chance of success is better in Greenland than elsewhere. Without discarding the possibility altogether, it would be ill-advised to rely on this approach as the mainstay of Greenlandic alcohol policy. When it comes to changing drinking behaviour, symbolic politics could prove to have a much stronger effect. In a small and very transparent society such as Greenland, the drinking habits of the social elite are known to everyone.

For some years, heavy drinking among some leading politicians and civil servants has been a constant source of scandal, embarrassment, and amusement among ordinary people. Worse still, it has legitimated this kind of behaviour. Now it seems like the political tide is turning. The newly elected premier of the home rule government emphasized his personal moderation during the election campaign and one of the first decisions of his government was to institute a ban on alcohol consumption in the home rule administration. If this marks a beginning of a skilful exploitation of symbolic politics, a change in drinking habits in the social elite could result and this could slowly filter back into the general public.

Considering the proportions of the alcohol problem, individual treatment of heavy drinkers can only contribute marginally to its solution. Nevertheless heavy drinkers who are motivated to change and who are persistent in the face of setbacks could set a good example to others. This could also form part of a campaign of symbolic politics against alcohol abuse.

Developing skills in conflict resolution and intervention. While alcohol policy is a long-standing issue in Greenlandic politics, interpersonal conflict resolution and intervention has not yet been on the political agenda. In my opinion it is time to break new ground here. Why not make conflict resolution and intervention into a school subject? To change traditional conflict-avoiding behaviour so deeply rooted in Greenlandic culture is a tall order and no miracles should be expected. A first step would be to design a curriculum for application in primary and secondary school. This curriculum must include: training in talking as rationally as possible about feelings like anger, hostility, fear, and jealousy; role-play situations about typical interpersonal conflict situations in order to develop conflict management skills; assertiveness training; training in relaxation of rigid sex-role attitudes; and training in third party conflict intervention and prosocial behaviour.

As a complement to this curriculum, the intervention of the police and the court system in interpersonal conflict should be carefully evaluated. Although the police and court by definition play a more reactive part in interpersonal conflicts, the potential for long-run effects on conflict behaviour should not be underestimated.

23

THE SITKA, ALASKA ALLIANCE FOR HEALTH

RESOURCE PERSONS

Members of the Sitka Alliance for Health

This profile of the Sitka Alliance for Health outlines the project's development and role in comprehensive community-based preventative health services and initiatives.

INTRODUCTORY REMARKS

The Alliance for Health aims to promote, support, advocate, and facilitate the design of long-term community development projects that focus on alcohol and drug dependency prevention strategies for Sitka and neighbouring rural villages in southeast Alaska. The Alliance for Health will develop comprehensive community-based and community-wide prevention services and initiatives that promote attitudes, relationships, and environments conducive to personal power, choice, and the ability to take active responsibility for creating positive change and growth in the community through individual involvement.

In 1989, a group of people got together in Sitka to talk about some issues related to alcohol and drug abuse in town. And we began to discuss the fact that, in our day-to-day work, we were dealing with some of the same people or the same kinds of problem areas or issues. So, we began to consider how we could enhance the health of the community and its people.

Among the members of the Alliance for Health who met in this original group were:

- the director of the Sitka Council on Alcoholism, an outpatient treatment facility, who served as the Alliance Vice-President;
- the owner of the local television station in Sitka, who has a strong interest in media production and reducing substance abuse;
- an employee of the Southeast Alaska Regional Health Authority, the largest Native health corporation in the United States, which operates youth treatment programs, a substance abuse program, a mental inpatient unit, and a variety of programs in small communities; and
- a magistrate in Sitka who works closely with the Alliance in attempting to locate community resources that will place people in effective drug and alcohol treatment programs or will place others, especially juveniles, in programs intended to develop a sense of self and future plans.

THE ALLIANCE FOR HEALTH

Dan Fletcher

We got together to think about how to affect this problem. For a very long time, a metaphor has been used across the country that you, in the judicial system, would be familiar with: "the war on drugs." This metaphor has brought some very serious problems in our country to our attention, but the country probably isn't capable of having a significant impact on alcohol or drug abuse, except to the extent that some people can be arrested and incarcerated or possibly placed in treatment.

My notion was that another way to approach this issue was by using a metaphor that was consistent with the theme of prevention, education, and treatment. That metaphor might be the formation of an alliance for health; that is, a community mobilization initiative to get people involved across all sectors of the community, including law enforcement, the judicial system, health services, social services, the clergy, parents, civic groups, and business groups. This initiative would get everybody involved in something positive, something that would be self-directed and related to the community's own view of what could happen and what should happen. It would also focus on empowering our community to improve our health as a community. Those goals were the impetus for the formation of the Sitka Alliance for Health.

We organized. Almost from the beginning an issue surfaced that all of the people who were involved in the Alliance for Health found interesting: a tax initiative related to alcohol. In this town, we have had a sales tax of four per cent on all goods including alcohol. The assembly had considered possibly increasing the alcohol tax by four per cent, dedicating the extra revenue for the purpose of alcohol and drug abuse prevention, education, and treatment.

The Alliance for Health group viewed this initiative as a way to support and educate the community about alcohol and drug issues. So, on our own time, we got together and tried our best to communicate to the community the importance of the proposed tax. The tax initiative was passed by a very slim margin: we went to bed four votes ahead, and, by the time all the absentee ballots were counted, we had won by thirty-eight votes. Although there were challenges by the bars and the alcohol industry, the courts have upheld the tax.

In a second referendum, the industry was interested in repealing the tax. That time, we won by 314 votes. That result affirms the notion that any community that considers the issue as a health issue understands that alcohol and drug abuse influences everybody in all areas of life. The community has responded very positively.

In 1990, $180,000 was collected from the tax, which amounts to $4.7 million spent on alcohol in Sitka in a single year. We were flabbergasted that so much money was spent: about $1,000 per person, since of the 8,000 people in Sitka half of them don't drink at all because of age or abstinence. The amount of money spent on alcohol in the community was amazing, pointing to the extent of the problem. So, it is very special that we got the referendum passed, and now this money is being disbursed for a good cause. (I think eighteen different organizations received money this past quarter.) It is a very positive step.

Comment

Member, Alliance of Health. Our involvement in the tax initiative became a catalyzing agent in the community by giving substantial and immediate feedback to the Alliance for Health. It proved that the Alliance could have an impact. We then put together a proposal for a Community Partnership Grant through the federal Office of Substance Abuse Prevention. We have been recommended for approval and will most likely receive a five-year grant. In the grant proposal, we attempted to address the needs in Sitka and to provide an opportunity for up to ten villages in southeast Alaska to get involved with this community development project, if they choose to.

The spirit of our efforts is to foster and support people and communities in stepping forward to get involved. They are trying to make a positive difference in the quality of life of the community with respect to substance abuse. In line with the mandate of the Office of Substance Abuse Prevention, a structure will be refined over the years to promote community health development; that is, to provide an opportunity for villages not just to be part of this project but also their own self-directed entities. To really promote health in their communities. To become part of a computer-based resource network that will link the villages. We can then add our skills to support their efforts to develop proposals or exchange information.

The Alliance for Health may well be where the Northern Justice Society was twelve or thirteen years ago: an idea to bring people together from law, enforcement, corrections, the judiciary, lawyers, and social service agencies to focus them on the subject of justice. In our initiative, we have gone to the media, hospitals, medical providers, and alcohol treatment providers to bring them together in search of healthy lifestyles. It's working in the Alliance.

The key is that we have a clear need for healthy lifestyles. The Alliance began with drug and alcohol treatment and prevention, but it is part of a larger health issue. When you can focus on that kind of issue, then you can reach the community, whether it is a community of 8,000 such as Sitka or smaller. If you can reach out and bring in people from the media, hospitals, alcohol treatment providers, and the court system to focus on this central need, I think you will find that money will follow. That's the appeal. You show the need, show support within your community, and then you can find the money—at least within the systems we have for funding community programs. It's really exciting. It is a help in court to be able to call upon a unified system of social services.

Not too long ago, we helped sponsor a St Patrick's Day run. We have just finished a twelve-part evening series on health. We addressed issues such as low fat and fibre diets, back trouble, diabetes, death and dying, and alzheimer's. About twenty-five to thirty people attended the weekly sessions. We are having an alcohol-free dance and hope for 300 people; we have had that many in the past. We have an annual picnic during Drug Awareness Month. This summer, we're also sponsoring a series of bicycle and running events. One event will be a 100-mile bike ride in Sitka. It's going to get boring: up and down, up and down. There isn't a variety of roads to ride on. So, we do these kinds of things as well. We are trying to have fun and show people they can have fun without substances.

We have also done a lot with the media. The owner of the TV station has been extensively involved in making his station available for promoting substance abuse prevention and education through public service announcements and a weekly television show. We know that we are making connections ih the community. That is precisely what will change the community and help people see and address the health issues involved.

The member of the Alliance who owns the television station was media director at the local college for twelve years before he bought the station. So, he has an educational orientation and feels very comfortable in that role, although his station sells commercials and does other regular commercial station things. With issues, he feels that it is very important to get local people on the air and doing the things that they need to do. Even though it is probably the smallest community station in the world, the station can still do some of the same things as larger community stations.

Another valuable tool is distance learning delivery. The station owner used to run a program that was funded by the state where we had thirty telecourses offered by satellite TV across the state. That is an additional way the media can be used. This goal can also be achieved through the use of videotapes.

We have produced several town forums on the subject of reducing substance abuse involving high school students and adults. The Alliance for Health Bowl includes a competition between the schools; one subject area is health. Music videos are another possibility. The kids are really hot for this: they struck their own music and shot some videotape to illustrate the message they wanted to get across. And our local public affairs program, "Potpourri," has a segment that addresses some aspect of health such as fetal alcohol syndrome.

Our local newspaper is also very cooperative. If we produce a decent presentation, the paper will publish and distribute it for us at no cost. The newspaper, television, and radio are public service resources that can be used. I don't know what is available to you in your own community—maybe bulletin boards or whatever. Do your very best to try to exploit what is there. We'll also produce a little telecourse on how communities can establish an alliance for health.

What we are trying to do is bring the community together. The Alliance emanates from the people who choose to get involved. Our goal is to facilitate, encourage, and support as many people coming into the circle as possible; to have it be self-determined. In this process, it is important to use the resources in the community. The possibilities and the positive outcomes are both endless.

24

THE NISHNAWBE-ASKI LEGAL SERVICES CORPORATION: ITS ORIGIN, MANDATE, AND RESEARCH PROGRAM

RESOURCE PERSONS

Donald J. Auger, Executive Director, Nishnawbe-Aski Legal Services Corporation, Fort William Indian Reserve, Thunder Bay, Ontario

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This paper represents an initial exploration of how three Nishnawbe-Aski Nation Communities handle problems of order that arise in their everyday life.

INTRODUCTION

The majority of social scientists would accept the view that almost all "problems of order" in most communities are dealt with by way of informal interpersonal mechanisms rather than by community or state intervention. In the case of the aboriginal peoples in Canada, however, concern has been expressed—as a result of clear evidence of "over-representation" of aboriginal peoples in correctional institutions—that there is an over-reliance on the criminal justice system to solve problems. There is also an almost universal belief among aboriginal leaders, social scientists, politicians, and others that the criminal justice system does not serve these communities well. These two factors—over-representation of aboriginal people in correctional institutions and an assessment that this same system does not serve the communities well—combine to suggest that other solutions to problems in aboriginal communities need to be explored. The Nishnawbe-Aski Legal Services Corporation was created in order to develop such solutions.

The Nishnawbe-Aski Legal Services Corporation was established following negotiation between the Nishnawbe-Aski Nation and the governments of Ontario and Canada. It was formally incorporated on 1 March 1990 pursuant to a resolution of the chiefs, which created an interim board of directors for the Corporation and instructed them to establish the organization. The directors of the corporation are taken from each of the seven tribal council areas, with one director representing the interests of each tribal area. There are four elders who sit on the Board as well as a chiefs' representative, who sits as an *ex officio* member of the Board. All members of the Corporation are members of one of the communities within the Nishnawbe-Aski Nation.

The Corporation was established to provide members of the Nishnawbe-Aski First Nation with easier access to legal services. It is intended that the major thrust of services will occur in the areas of public legal education, cross-cultural training, legal services, interpretation services, and law reform, a function that will consist, initially, largely of a research project. The project being carried out by the Nishnawbe-Aski Legal Services Corporation, of which this paper is a part, is designed to address the following goals:

- to assess the nature of the problems as they exist in each community;
- to describe how these problems are presently handled;
- to assess the members of the community and how they feel the problems should be handled;
- to work with the communities to explore more effective ways in which the community can deal with problems; and
- to provide a taxonomy of problems recognized as such by the members of the communities.

CULTURAL BACKGROUND

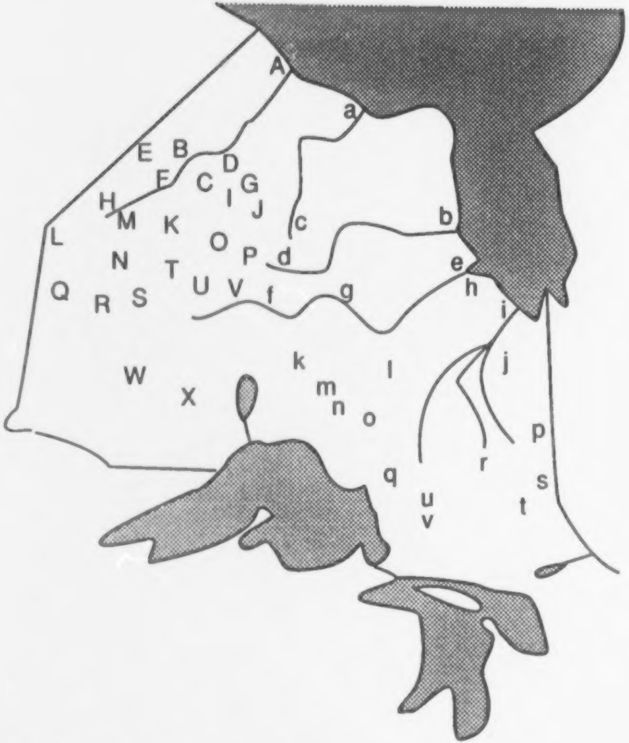
Before we look at how the three Nishnawbe-Aski Nation communities handle problems, it will be useful to begin with a brief description of the cultural background of the people who live there.

The Nishnawbe-Aski Nation communities are located in the subarctic area of Canada—a huge expanse of territory that stretches across northern Canada south of the tree line. (See map following page.) The Cree and Ojibwa Indians of the Nishnawbe-Aski Nation live in communities located in the central part of this territory in northern Ontario from the Manitoba to the Quebec border, in an area the size of France.

This paper deals with three quite different Nishnawbe-Aski Nation communities. Although the residents of the three communities are called Cree and Ojibwa Indians, they usually refer to themselves as Anishinawbe. According to their sacred tales, they have lived in northern Ontario since time out of mind. The same tales recount that the Anishinawbe originated as distinct people on account of the actions of the supernatural world.

The archaeological background of the people is equally interesting. Although much else remains to be learned, archaeologists are now fairly certain that the Anishinawbe are descendants of the Shield Archaic Indians. According to historians, such people were in complete control of northern Ontario from about 7,000 until about 3,000 years ago, where they adapted to local conditions by relying on big game and fish for food. Such was also the case among the direct descendants of the Shield Archaic people, who are known as Woodland people. It was the Woodland people who gave rise to the Cree and Ojibwa, and, before contact with Europeans, they too

Fort Severn - A
Bearskin - B
Wawakapewin - C
Big Trout Lake - D
Sachigo - E
Muskrat Dam - F
Wapekeka - G
Sandy Lake - H
Kingfisher - I
Kasabonika - J
North Caribou Lake - K
Deer Lake - L
Keewaywin - M
North Spirit Lake - N
Wunnumin - O
Summer Beaver - P
Poplar Hill - Q
Pikangikum - R
Macdowell Lake - S
Cat Lake - T
New Slate Falls - U
New Osnaburgh - V
Lac Seul - W
New Saugeen Nation - X



Peawanucx - a
Attawapiskat - b
Webequie - c
Lansdowne House - d
Kashechewan - e
Fort Hope - f
Marten Falls - g
Fort Albany - h
Mocreebec Moose - i
New Post - j
Aroland - k
Constance Lake - l
Long Lake - m
Ginoogaming - n
Hornepayne - o
Wahgoshig - p
Missanabie Cree - q
Matachewan - r
Beaverhouse - s
Mattagami - t
Chapleau Cree - u
Brunswick House - v

Map showing Nishnawbe-Aski Nation Communities

pursued big game and fish for their livelihood. In fact, during the 7,000 years that the ancestors of the Anishinawbe occupied northern Ontario prior to contact, they were constantly improving their ability to live off the land, so much so that when they finally did come into contact with Europeans in the seventeenth century, the newcomers were amazed at their skills.

Contrary to popular opinion, the newcomers were also initially dependent on the Anishinawbe for their survival. Europeans relied on the Anishinawbe to provide them with food, with geographical information, and with the furs that their traders purchased from Indian suppliers to ship overseas. Moreover, during the heyday of the fur trade, the Cree and Ojibwa not only compelled European traders to adopt their custom of "gift-giving" as an integral part of the trade, but also demanded and received specific items as trade goods. During the same period, the Anishinawbe also moved between trading posts in northern Ontario to secure the best "price" for their pelts.

However, in time, the Cree and Ojibwa in northern Ontario did become economically dependent on the Europeans. By the close of the nineteenth century, although their economy was still based on living off the land, some Cree and Ojibwa bands began to spend more of their time around the trading posts that they had formerly visited only in summer. It was in such locations that their members became increasingly dependent on European credit.

It was also at such trading posts that the immediate ancestors of the residents of the three communities under consideration met with government officials to conclude Treaty Nine in 1905–1906, and the addition to that treaty that was made in 1929. According to the terms of those agreements, the Cree and Ojibwa in northern Ontario agreed to cede their aboriginal title to 219,000 square miles of land. In return, the government promised to establish reserves for the Indians, to provide them with teachers and schools, and to pay them an annuity of a few dollars each year. The government also agreed, at the insistence of the Indians, to allow the signatories and their descendants to hunt, fish, and trap on unoccupied Crown land, subject to such regulations as might from time to time be made by the federal government.

For many years, this arrangement proved satisfactory. Although the Anishinawbe never recaptured the powerful economic position they had held during the heyday of the fur trade, during the first half of the twentieth century many Cree and Ojibwa bands were able to subsist off the land. In fact, it was not until the 1950s that the villages that currently house the residents of the communities under consideration were actually formed. These villages were not created at the request of the Indians but rather at the insistence of the government, especially so that Indian children could receive formal education—one of the keys to civilization, according to the government's point of view.

However, the creation of permanent villages and the subsequent initiation of poorly-designed initiatives that the government launched to improve the social and economic situation of the Anishinawbe, dependency paradoxically increased. In concert with that growing dependency, social problems also increased, and, with the emergence of such problems, despite the fact that the Anishinawbe never agreed to abandon the right to administer their own system of justice, the present Euro-Canadian system of justice was introduced into their communities. Although not all transgressions are dealt with by this new system—the Anishinawbe still prefer to deal with certain problems themselves—that system has produced some startling results in what Western observers refer to as crime and punishment. The most startling—and most often quoted—of these findings relates to the "over-representation" of aboriginal peoples in the criminal justice system. Aboriginal peoples are dramatically more likely to be victims and to be named as suspects in homicide cases; they are more likely than non-Natives to be held in custody awaiting trial; and they are less likely than non-Natives to be released on parole before the expiry of their sentences.

METHOD

This paper reports data from two main sources—interviews with members of three Nishnawbe-Aski Nation communities and court data relating to charges laid against members of these communities. (We are in the process of attempting to gain access to police records for the Nishnawbe-Aski Nation communities; in the final version of this paper, we hope to be able to include those data.) The interview data were collected by us, or community legal workers, or by someone in the community hired by us to carry out the interviews.

Our initial plan was to sample members of each community on a random basis. This turned out to be impractical for a number of reasons. For example, some members of the Band who are officially living on reserve were, in fact, temporarily away from the reserve. Broadly speaking, what we probably ended up with is a heterogeneous, but haphazardly selected sample. In one community, for example, we attempted to interview one person from every house. In others, we interviewed whoever was available when we were carrying out the interviews. Though the sampling is not ideal, it is unlikely that there is any obvious bias in favour of any particular perspective within the community nor is it likely that the method of sampling varied in any material way from community to community.

The interview dealt with a number of areas related to handling problems in the community. Respondents were asked a number of questions about the manner in which problems, generally, were handled in the community. They were then asked to answer a few questions about a number of specific problems (for example, "stealing something," "someone getting mad and threatening people," and "fighting"). For each problem, they were asked how frequently it occurred, and how it was and should be handled. Finally, they were asked a number of more general questions about the criminal justice system (for example, their views about the courts).

The court data were obtained from court dockets for each community. The data, for the most part, deal with individual charges that were scheduled for their first appearance in the year indicated in the table. They may or may not have been disposed of during that same year. "Charges" as a unit of count must be distinguished from "cases" (which might involve more than one charge being laid at the same time against a single individual) or "persons" which would be the count of the number of different people appearing in the court during a specified period. In addition, it should be remembered that these data relate to charges that were laid. Presumably, there were some offences that were recorded, but nobody had been charged. One might also expect to find some charges laid where the accused was not subsequently found guilty (either because of an acquittal or a withdrawal of charges).

PERCEPTIONS OF THE PROBLEMS

When this study is complete, we hope to have data from the forty-five to fifty Nishnawbe-Aski communities. Our assumption is that the problems, and the ways in which these problems are handled, will vary with the community. Most problems in any community are handled by the family of those involved, friends, or by the general community. The criminal justice system clearly gets involved in only a small portion of those things that might be considered to be criminal. Fights, for example, that might, under the *Criminal Code* be considered assaults, are often dealt with informally. The willingness, and perhaps the capacity, of the community to deal with problems, may vary from community to community.

Our first research goal, then, was to put together a picture of the problems as the members of the community perceive them. We first wanted to get an idea of how frequently various problems were perceived to occur by members of each community. We could then look to see how frequently such problems found their way into the formal criminal justice system. And, of course, we could assess the willingness of members of the community to deal with each of the problems outside of the criminal justice system. We assume that this will vary with the community. And we assume that each community will have to fashion its own solutions to the problems.

As shown in Figure 1, the perceived frequency of various problems varies from one community to the next. This figure plots the proportion of respondents in each community who indicated that each problem occurred "frequently." We asked questions concerning about a dozen problems. Clearly, one cannot talk about problems as if they were similar in each community. Even looking at these four problem areas, there were differences on the perceived relative frequency of stealing, using drugs, sexual assault, and drunkenness from community to community. On other problems—fighting for example—there were no significant differences across communities. One might tentatively conclude that the problems may vary in magnitude across and within communities, and therefore, one should not assume that one can talk about problems as it they were similar in different communities.

Respondents were asked to indicate if problems occurred "frequently, infrequently, or almost never." For sexual assault only, we have included those who indicated that rape/sexual assault was a frequent or infrequently occurring problem. One-third of the Deep River respondents indicated that the problem occurred frequently; no respondents from the other two communities answered "frequently." The other notable difference on this question was that fifty-four per cent of the respondents from Castle Dam indicated they didn't know as compared to thirteen per cent from Deep River and no respondents from Blackfly Lake.

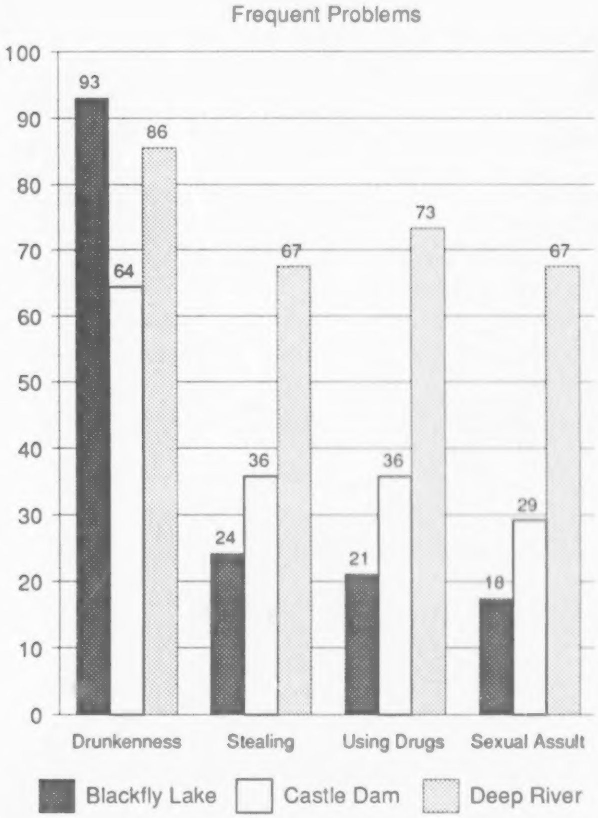


Figure 1. Community variation for reporting various problems as occurring frequently

Figure 2 presents the responses to questions concerning band members' views on whether problems should be handled within the community. Once again, we can see enormous variation across communities. On these four problems, band members from Blackfly Lake were more willing to deal with community problems than were band members from other communities. There were some problems—stealing, and getting mad and threatening people, for example—where the differences were not statistically significant across communities.

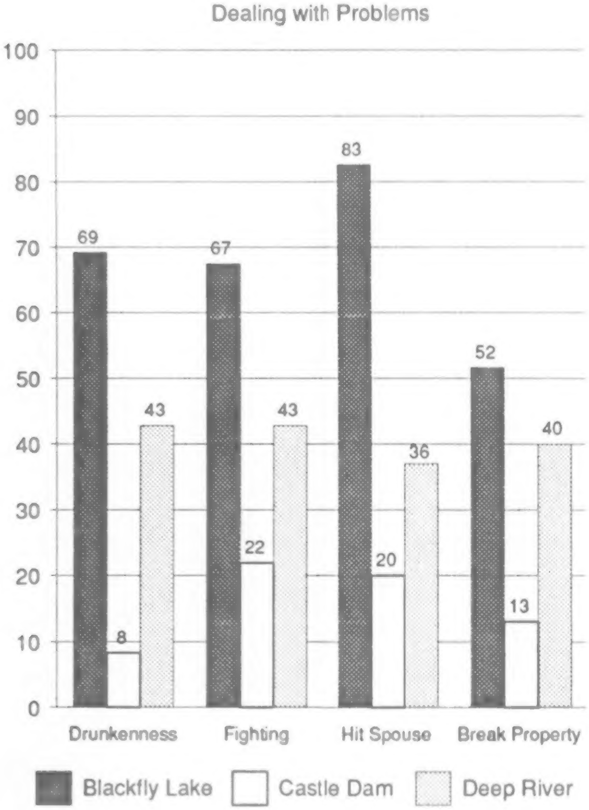


Figure 2. Community variation for reporting that various problems should be dealt with in the community

Looking across all of the problem areas we sampled, we did not find evidence of a relationship between the perceived frequency of a problem and the willingness of band members to deal with it within the community. From a practical perspective, then a "solution" (for example, dealing with a problem within the community vs. outside the community) that was based on one community and exported to another—would not necessarily make sense in the second community.

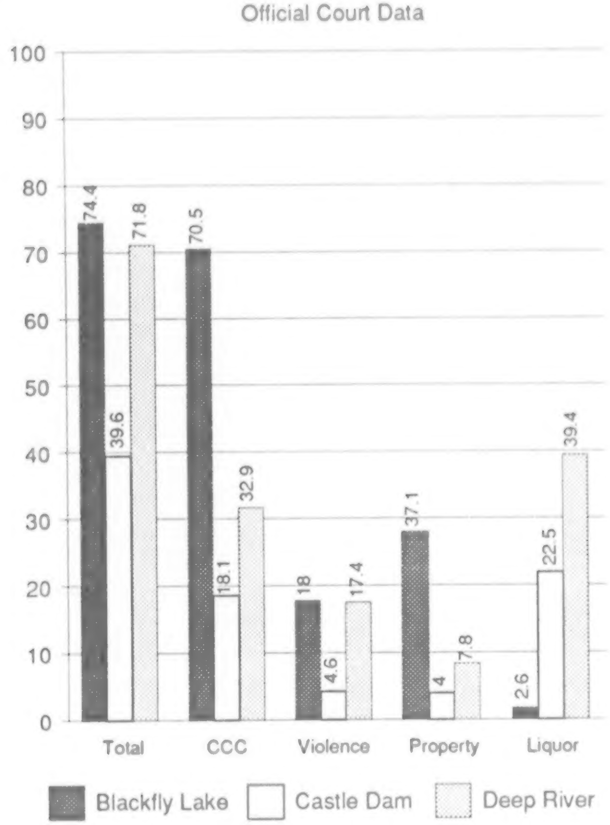


Figure 3. Adult charges between 1 January 1988 and 12 December 1990: comparison of rates per 100 adults by community

There was, of course, a good deal of variability within communities as well. For most problems, some people thought problems should be handled within the community and some thought the resolution should be found outside of the community in the formal court structure.

Turning now to the court, it is clear that there is also a good deal of variation. Looking at the data in terms of the number of charges per 100 adults in the three-year period of our study (see Figure 3), it is clear that communities vary greatly in both the overall rates and in the types of problems that end up in court. The variation in types of offences that arrive in court is clearly shown in Figure 4. We shouldn't be surprised by this variation: we have already shown that community tolerance (or willingness) to handle different types of offences within the community varies with the community.

These data, however, obscure one other important finding: in the past three years, there is also enormous year-to-year variation in the type (and numbers) of matters going to court in the various communities. For example, between 1988 and 1990, total charges for Blackfly Lake dropped approximately eighty per cent: total charges for Castle Dam increased by approximately 187 per cent: and in Deep River, total charges increased by approximately forty-six per cent.

Finally, we can look at how the court itself is seen. Figure 5 gives the distribution of responses for each community on whether the court is seen as doing what the community would like it to. Band members clearly responded differently to the question about the court in the different communities. The majority of band members in all communities, however, indicate that they do not think that troublesome behaviour gets settled in a satisfactory manner.

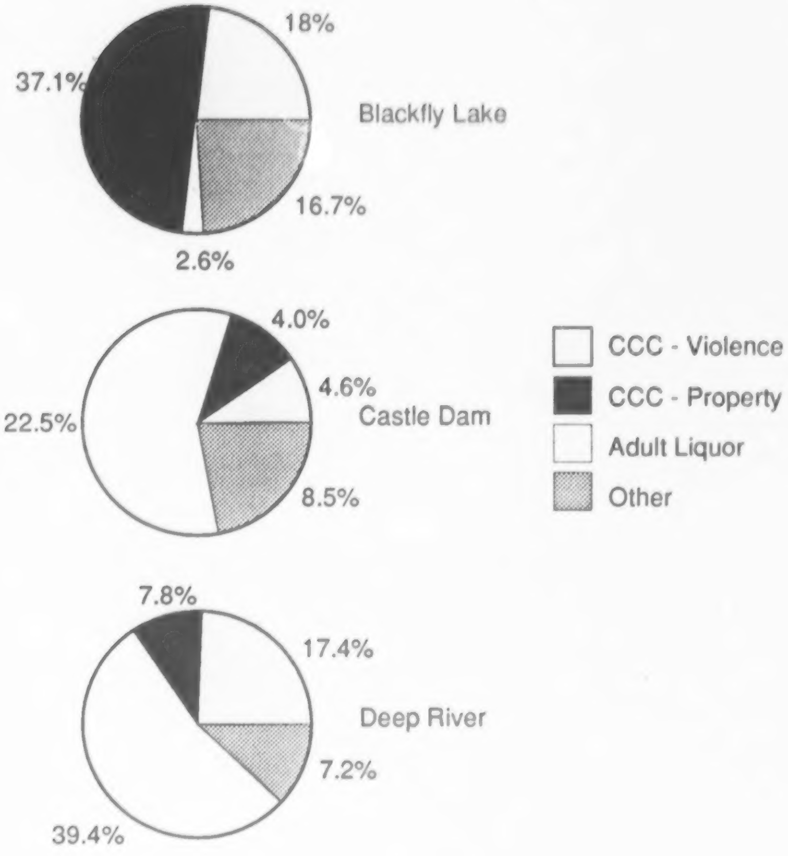


Figure 4. **Nishnawbe-Aski Legal Services Corporation Crime and Justice Survey: official court data rates per 100 adults by community**

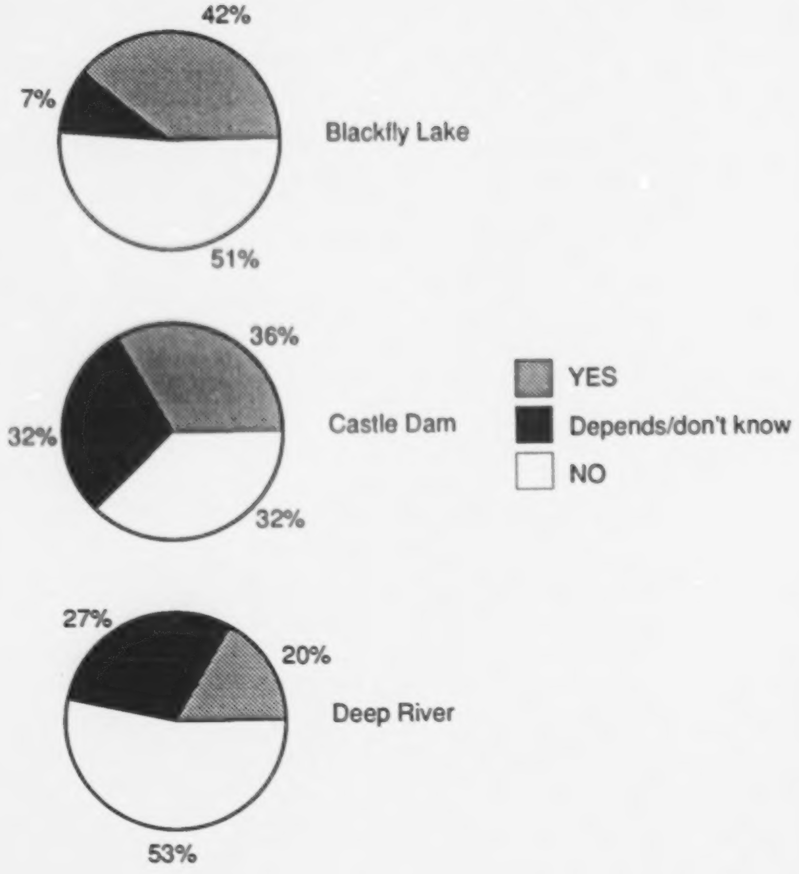


Figure 5. Nishnawbe-Aski Legal Services Corporation Crime and Justice Survey: Does the court generally do what the community would like it to do?

CONCLUSIONS

Tentatively, it would appear that the following conclusions might be drawn from these preliminary findings.

- The nature and extent of the problems varies with the community.
- The extent to which problems are brought to the attention of the court varies with the community.
- Community members do not think all of their "crime" problems should be dealt with in the community, nor do they want all problems to be handled outside of the community in the court system.
- Variation exists within and across communities about how a particular problem should be handled completely within the community.
- The present combination of ways of handling problems is not seen as satisfactory.
- It seems that members of these communities want some combination of systems. There is little support for either extreme position—the status quo or complete replacement of the present system with a community-based system.

Given the inability of the Euro-Canadian system to handle a wide range of problems effectively, the communities might wish to consider strengthening the aboriginal system that is in place to deal with those problems community members want to handle themselves. This system might be combined with attempts to achieve the cooperation necessary to use the Euro-Canadian system more effectively to handle the remaining problems.

Finally, it appears likely that solutions, if they are to be effective, must be tailored to fit—or must be flexible enough to fit—the needs and wishes of each community.

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25

WRITING SKILLS FOR COMMUNITY-BASED JUSTICE ADMINISTRATORS

RESOURCE PERSON

Tom Grieve, Assistant Professor, Department of English, Simon Fraser University, Burnaby, British Columbia

Tom Grieve presents a new method for writing reports, grant applications, letters, or even memos. This method was developed from research on how to write more effectively and expeditiously and how to get ideas down on paper quickly in draft form without worrying about the final product. The method depends on one's ability to follow a fairly strict series of steps for producing writing.

INTRODUCTION

The biggest problem for all writers is procrastination or avoiding the task of writing. A person might say they took twenty hours to write a proposal but, if the truth were known, they spent five or six of those hours involved in constructive writing and the rest of the time thinking, brainstorming, and chatting about the proposal. All of which can be useful but the process often drags on unnecessarily. I want to describe a *process* of writing, because that is the key to becoming a better and more confident writer.

I previously used the old method of writing: I would eke out the proposal word by word. The only promise I made myself was that, once it was down on paper, it would never be changed. I would pile on word upon word, like bricks on a wall with a sense that, with the mortar there, it was going to be solid when it was finished. That was it. But I was forcing myself by doing that and I was, as psychologists might say, being anal-retentive. I'd also get as many words as I could on a page. Single spaced in tiny little handwriting. But I knew that once I was done, boy it was done, and, if I had one page of foolscap, I'd have three pages of type. Awful, awful practices. What I was doing was forcing myself to do the three processes that go into writing all at once.

I used to write exactly. Most of the time it was not drafting. I was sitting at my desk, getting another cup of coffee, talking to somebody, going for a long walk, so that I get those ideas straight. It was really about fifty per cent procrastination and twenty per cent desperation in the drafting stage. There's a myth that good writers are not made, that they're bom. That good writers have some mysterious talent and skill that comes from the gods. You're inspired or you're not; it's just that kind of a feeling. The traditional pose of the writer is grabbing the forehead, and worrying about something. The other image that we have of writers is that they work up in lonely towers; they look out the casement windows; and they look at the moon for inspiration. The paper is blank. Then, all of a sudden, they dash off a famous poem or play or novel. This is an absolute myth.

This discussion will concentrate on proposals, because reports are far easier to write. If you can write a good proposal, it's fairly easy to write a good report, because the proposal has to be convincing and argumentative. A report has to be more or less objective.

I will address the structure and organization of proposals, why they work the way they do, and how information can be organized in such a way that your reader's needs are met by the way you structure your arguments and organize your information. The trouble with most proposals is that they are written from the writer's point of view and not a reader's point of view. Focus on the perspective of the reader when organizing your ideas.

I won't discuss basic grammar or vocabulary building or effective paragraphs, although headings are an important part of organizing ideas in good, clear generalities in a proposal. Basically, I'll focus on an overall method of producing a good proposal—a method that can be adapted to other writing assignments. Much of this is related to fundraising. That's what it comes down to when you write a proposal: support for your ideas, plans, or dreams.

WRITING A GOOD PROPOSAL

You were probably not a born proposal writer. Proposal writing isn't taught regularly or uniformly in centres of higher education, technical schools, or anywhere else for that matter. Most people find themselves designated as the writer in an organization for reasons that remain mysterious; it's probably that nobody else wants to do it. There is, all of a sudden, the need for someone to go out and hustle some new business, contracts, or funding support. People are thrown into proposal writing with very little preparation.

What often happens is that the person assigned the task of preparing the proposal goes to the filing cabinet, finds out what's been done before, changes the names to protect the innocent, and cranks out more or less the same old stuff that was cranked out five years previously. The person who wrote that proposal five years ago, in turn, had gone to the filing cabinet as well! So people are often manufacturing proposals that are really just slight variations on forms and procedures that were devised a decade or two decades ago. They are out-of-date, old-fashioned, long-winded, and badly organized. But the poor writer thinks that's better than nothing, and doesn't take the time to organize a format that actually works for his or her organization, because often there just isn't enough time.

THE WRITING PROCESS

Pre-Writing or Invention

This is the stage when you are mulling ideas around in your head. You're talking, phoning, brainstorming, jotting down ideas, doing research, going to the records in the files, or whatever.

Traditionally, *product-oriented* writing was the focus: "Here is the product. Now here is how we want to fit students' skills and talents and ideas into this approach." In other words, students were asked to write a sentence after being told about good sentences. They were asked to fit their thoughts into good sentence form. They were then asked to write a paragraph: "Here is what a good paragraph looks like. It has a topic sentence and it has transitions. Fit your ideas into that formula." They were next asked to write a report or an essay and were told the same thing.

I remember asking my university students what they thought an essay was. They said, "It is five paragraphs long. It's got an introduction, body, and conclusion. The introduction tells you what you are going to say, the body says it, and the conclusion tells you what you told." That sounds like a *really* creative act, although the students were very adept at saying nothing for five paragraphs. That's the product approach. Many people thought that perhaps it was the attention to *product* and not to the process of actually getting ideas on paper that was part of the problem.

(Researchers have gone out and interviewed successful writers from all walks of life, including journalists, columnists, technical writers, novelists, report writers, proposal writers, policy manual writers, people who write for a living or for a good chunk of their living—all good writers. They started asking what these people did to produce effective copy. And, lo and behold, what they were told was very, very different from the writing processes of naive writers.)

Brainstorming, a primary technique at this stage of proposal writing, is most useful when done in a group. People kid themselves that they can brainstorm by themselves. Brainstorming by yourself is a real hit-and-miss business. It's so easy to get distracted; it's so easy to get off the topic. Try for ten minutes to brainstorm without getting off the track. It's torture. It's almost impossible. The point of having a group is that it helps the process become something objective; your ideas aren't just milling around in your mind.

The brainstorming group should be relatively small. Four or five people who are more or less focused and intent on getting something done can have a very good session of brainstorming. More than five people is usually too many. You've got to have one person who agrees to stay out of the brainstorming and simply to record what's going on. (It's often not very useful if you've had a great brainstorming session, the telephone rings, and twenty minutes later you don't remember half of what was discussed. By next morning you remember a quarter of it. And nobody's got it down on paper.)

Let me give you a really simple piece of advice. Do you know what professional writers do? They write. All the time. Get yourself a journal. Get yourself a book. Something that's convenient to carry in your briefcase. Something you can haul out and jot down ideas as they come to you. It's great practice for the transition from mind to paper, which is basically what writing's all about. And it's absolutely indispensable, because otherwise you'll lose your ideas.

I get my best ideas when I am driving in a car and just before I go to bed at night. I keep a little clipboard right beside me on the seat of my car. I've got a journal in my briefcase. I've got my computer on in my office at all times. Even if it's momentarily inconvenient to stop what you're doing to write an idea down, you have all sorts of ideas that are recorded and many of these will go, almost verbatim, into the proposals you're writing.

I go through my journal and rip out pieces of paper and stick them in files. When I do a report, or proposal, or letter, I just go to the files and the materials are already there. So I'm not starting from scratch all the time, which is one of the toughest things about writing. That blank sheet of paper; that glaring, blank computer screen in front of you. Get used to getting your ideas moving.

For example, you're going to a meeting and you jot down some notes while you are in the meeting relating to ideas that arise in the discussion. When you leave that meeting, as soon as possible force yourself to go back to your office or some quiet place, and just sit down for a couple of minutes to write out in short summary or point form the valuable ideas that you got from that meeting. Just write them down very briefly. In your own words. Nobody else is going to read it. This is for your use only.

If you are speaking with someone on the telephone, jot down notes. When you have finished with the call, take a minute, and say, "What was useful about that phone call? What ideas came up? What possible strategies were there? What contacts should I make?" Are there things you should look for? Get it down in some form. Type it up, wordprocess it, or write it out in your own indecipherable handwriting. Talk then write. People are really good at talking, but they don't do the "then write" part. So every little step, each incremental step, is the way that you will focus your energies on the task at hand, which is getting the ideas on paper.

Drafting

In this stage, which is really the organizational phase, you prepare a rough draft. This involves taking the ideas and presenting them in an organized way, so that one idea leads logically into another. Get it out on paper, not in any final form, but get it out so you can see what you've got.

The intended audience for the proposal is important, as is the language of the proposal. There are different sections in any document whether it's a proposal, report, or letter. With a letter, you can take for granted that your audience's concerns are going to be most focused on the information given to them.

The level of language and jargon used in the trade presents special problems. On the one hand, you want to convince somebody that you speak their language, but on the other hand you don't want to alienate somebody else by using jargon that's going to mystify them. One of the best ways of handling this problem is to realize that there are certain places in a proposal or report where you can get away with using jargon or the language of the trade. And there are other places where you do so at considerable risk to the success of your venture.

If you work for the federal Ministry of Solicitor General and you're dealing with judges and lawyers, a kind of language comes with the discipline; that is, there is a common vocabulary of the trade. If you're actually trying to address the Native community, and you're using the language of lawyers and judges, you can often alienate members of your audience, because they simply say, "Well, here's somebody that just speaks all that bureaucratese and doesn't get down to the real emotions."

The problem is not just going up, but it's also going down. You don't want to speak above people's educational level, knowledge, and vocabulary. On the other hand, perhaps an even worse failing is to sound like a bunch of hicks when you're going to government and you can't speak the language that they understand. I used to have a sheet of paper taped on the wall above my desk that forced me to think about the audience I was addressing.

Acknowledge the questions that you have to ask yourself and answer in order to make an effective written document for a specific audience. Some of these questions are very general; some of them can be very specific. For example, what are the audience's fears and prejudices? This is a question that can be used to motivate you in writing a draft. Keep that question uppermost in your mind when you're jotting down some point-form notes. Again, who is the audience?

Proposals and reports have some key places. In the report's introductory section, you have to watch very closely how your language can attract or repel your audience. Once you get into some of the technical descriptions and appendices, the facts and figures, the tables and the complex arguments, and the plans and procedures, you can risk a little bit more because those are places where readers will pay somewhat less attention.

Write from the perspective of the reader. The proposal's summary section and the report's introductory and summary sections are two places where you have to be most attentive to your language. You want to write in a language that's going to be understandable and persuasive to the intelligent layman, not the expert. Those parts of your document are going to be read most closely and are often the only parts of documents that some people are going to see.

In the language of the trade we call them summaries or executive summaries. This doesn't necessarily mean that executives read them because a lot of proposals are written for organizations that don't have an executive or a single decisionmaker at the top. The most important part of any proposal is the one- or two-page summary that comes at the beginning of the proposal. It is here that the lay reader must be convinced and not feel alienated.

Once you get into detailed plans and procedures such as cost accounting, you can fill up the proposal with jargon, because often the boards of directors or the decisionmaker is going to refer that part of the proposal or report to the experts. They'll then make sure that everything is in order. So, when I write proposals, I find that I spend most of my time on the introduction.

Revising

Good writers leave half of their time for revision. They spend significant time in the pre-writing or invention stage, a small percentage of time in the drafting stage, and the rest in revision. Bad writers spend about twenty per cent of their time at the pre-writing stage, seventy per cent of their time on the drafting stage, and about ten per cent of the time at the revising stage, which is not really revision at all, but rather just proofreading. That's when you run the document through a spell-checker, dot your i's and cross your t's, and make sure that the inside address is correct. These procedures aren't really revision at all; you're just checking for some obvious errors.

Revision means "to see again." We have to dedicate more time to looking objectively at what we've got in the quick draft to see how it can best be structured to meet the needs of our audience. The experienced writer spends a considerable amount of time in this stage.

All successful writers revise and revise and revise. They sweat it out. It's tough work. Nobody's inspired. It's hard work, but there's a method that can be used to divide up some of the tasks of writing so that you don't feel like you're one of those uninspired people who can never write anything, because that's nonsense.

At this point, you begin to identify ideas, provide the necessary background, develop a persuasive rationale, and cite relevant experiences. A key point to develop is that there's a need out that that's not being addressed. This stage is perhaps the most crucial component of proposal writing.

One of the things I want to mention are boiler plates. This is information that you produce once and once only such as the history of your organization, personnel, and past experience; information that represents a good chunk of what goes into even a specifically focused proposal. All you have to do is occasionally adapt or trim or expand it a little. This information can be prepared beforehand and kept on a computer file to be inserted into new proposals. The more you can do this, the better. I've had people taking proposal writing courses from me who have to produce ten proposals per week, not just once in awhile. While you don't want a proposal to look as if it's just sent out to everybody, like direct mail, you do have to compromise and have a clear sense of what can be produced beforehand and included in different documents. Otherwise your proposal looks pieced together. But, with a computer, you can make a proposal look very personalized when in fact it's not.

The expressive component of the proposal involves deciding what language, vocabulary, sentence structures, words, and title headings you will use. This is a very difficult thing for the human brain to do—to think about the content of what you want to say, to organize that content, and to express it at the same time. When you use the "first-time right approach," you're demanding that of yourself.

Think about your own experiences as a writer. How often have you been sitting there in front of a blank or partially blank page, wondering where to go next? It's like playing three-dimensional chess. You're saying, "Should I mention this now or later?" And then, "Gee, that's not the right word. How am I going to say this?" And by the time you've worried out how you're going to say it, you've forgotten about where you were going to put it and you forgot how it relates to your overall idea. This is what is frustrating about being a good writer.

In the writing process, the three tasks—inventing, drafting, and revising—should be divided up as much as possible. Devote yourself in the first stage of writing to getting a good grip on your ideas and their ramifications and connections. Don't worry about organizing them or expressing them. In the drafting stage, worry about getting some basic order for your ideas—a quick draft where you don't worry about crossing the t's or having the exactly right word. Develop a basic organizational scheme and then you leave yourself about fifty per cent of your time for revision. Worry then about developing the argument further by addressing such questions as follow:

- Can I reorganize?
- Are there things that I've left until the end of the document that need to be brought up to the front of the document?
- After reading my cover letter and introduction or summary, would readers know exactly what's good about this project?
- Have I addressed the needs of the readers? Have I fulfilled their desire to know why this project is important?
- How much is it going to cost?
- How can they help?

- What recognition are they going to get?
- What evaluation is going to go on?
- Have I stressed the key points in this proposal often enough so readers can't miss them?

Many people think that repetition is a problem in proposal writing. It's not. Most proposals have several primary ideas that are the selling points of the proposal. Far too often, the readers of proposals find the first point on page three, the next one on page seven, the next on page twelve, and the final point in an appendix at the back of the proposal. There is no place where the proposal highlights are brought together for readers to see what is really interesting and important.

You've got to stress those points three or four times in the proposal. Don't worry about repetition. Most readers like repetition. They're not reading your proposal for your stylistic brilliance. Here's a good analogy. What's the most basic strategy of a writer of a murder mystery who wants the reader to keep reading? Mystery. Suspense. That is exactly the wrong strategy for proposals. There should be no suspense whatsoever. You let the cat out of the bag. You tell "who done it" right away. People read murder mysteries for entertainment. And they like the sense of mystery. People do not read proposals to be mystified. There's no character development in a proposal. The reader can't sympathize with a character or say, "Well, here's the bad guy and there's the good guy." There's nothing to hold the reader's attention, other than the force of your logic.

What goes into a proposal? "Here is a problem. We're the people to solve the problem. Here's what it's going to cost." Right? No mystery. You tell them right up front what important project you want to do, why your organization is the right group to do it, why they're a likely source for funding, and how much the project will cost. In the cover letter you tell them; in the summary you tell them; and you tell them once more in detail in the remainder of the report.

To review the method: think about dividing your time according to the three functions of writing: the invention or content phase; the drafting or organization phase; and the revising or the expressing phase. Don't confuse them all at once. Don't force yourself to do it right the first time. Whether it's a memo, one-page letter, or fifty-page proposal, force yourself to divide your writing time.

For example, you have an hour to write a letter. Make some telephone calls and jot down some ideas on paper. Think about all of the various things that play into these ideas. Then force yourself to write for about ten minutes. Not complete sentences. Not worrying about having just the right word. If you've got ten minutes out of the hour to do a draft of a one-page letter, you just whip it out. You've got your sheet with your ideas jotted down on it, and you just whip it out. Dear Joe, blah, blah, blah, and you just let it rip, point form.

Then comes revising. Look at what you've got, and you're going to say, "Okay, I've mentioned this idea that's important. But I've got it down here near the end of this letter. I want it up front. That shouldn't be the seventh point. That should be the first point." "Okay. I've wasted a bit of time here, I've repeated myself here. I've really said the same thing in three different places. I've got to cut there or combine two related thoughts into one coherent idea." If you've got them down in some way so that you can objectify them—see what you've got—then you've got a chance for revising in ways that will make your writing more effective. What happens with the old style, is that by the time you get to the end of the hour, you are still scratching your head, worrying about this, trying to say it just right, and you've forgot the really important things.

The worst error of most writers is that they beat around the bush. This method ensures that, once you see what you've got, you can effectively condense and organize your writing. And if you've got more time, think up some better words if you're tired of repeating the same word four times. But realize that most readers don't notice that: they want their information quick.

Several additional points. Pre-writing oils the machine and gets your ideas going in a way that's liberating, but not tied down to some preconceived form. So, at the invention stage you're discovering your ideas, content, and strategies. You've got to think of writing as a strategic act. You're writing to get something, to get somewhere; it's not just self-expression, or talking about something for the sake of talking about it. You're trying to convince or persuade. And you want action.

Make use of the telephone. Make a point of phoning people. As you get more contacts you will have more and more people with whom you can talk and who can give you advice. They might know the agency that you're trying to contact and who you should talk to there. They might tell you about a successful similar project they did. I'm always impressed by how willing most people are to share information and ideas.

You will save an enormous amount of time by picking up the telephone to call half-a-dozen people and get some ideas: "Say, have you dealt with the federal department of X before? Who do you talk to over there and what do they like and what don't they like? Will they take an unsolicited proposal or do I have to phone them and make sure that they know who I am before I send it?" Overcome any hesitation about using this strategy, for you can find out all sorts of information, including funding application deadlines, minimum or maximum grant amounts, and the availability of money for operations or projects only.

THE FIVE "W'S"

This series of questions forces you to cover your ideas and to better reach the needs of your audience. A reporter says, "Who? What? Where? When? Why?" And then writes a news story by answering those questions. Now this is a little more complicated, but it's basically the same structure. Ask yourself these questions and, by answering, a good proposal will emerge. It will cover the questions and issues that most readers are going to have about the proposal and, by doing that, the proposal will meet their needs as readers. You must do this in order to persuade them.

Even at the invention or pre-writing stage, ask yourself:

- What's my audience going to be most biased about?
- Where are their prejudices about this project?
- Is it going to cost too much money?
- Is that their main bias?
- How much of the funds will go to meet community needs and how much will pad someone's pockets?

These are questions people ask about proposals. Remember that your audience might not know about your organization and may be wary about giving money. How do you address those concerns? Identify the audience's fears, prejudices, doubts about your ability, or about the need for the project. And make sure that your proposal clearly addresses those concerns. You're then going to have a very successful proposal.

Many people say, "If I don't raise this issue, my reader will never think about it." Wrong. Your reader is going to think about it long before you do. You have to become what's called a devil's advocate and say to yourself, "I have been really critical here. Now, what is this audience going to say about me or my organization? Will they doubt what I say? If I say I'm experienced, they're going to say, "Oh, yeah. In what? How is your experience relevant to this project? Who are your personnel? Who is going to lead the project? What is your relationship with the Native community that you're serving or the justice segment that you're serving? What experience have you had doing this kind of project before? How successful was it? *Was* it successful? Do you have letters of reference? Any testimonials?"

Put yourself in the mind of the person appraising your proposal. Ask yourself in the invention stage and the drafting stage the questions that you expect will be asked about your proposal. Force yourself to do that. This is perhaps the best invention technique or pre-writing exercise there is. Ask yourself some other questions: "What are the needs of your audience? Is your prospective client well informed about those needs?" These questions are complicated when you think about them for a moment. Many proposal writers think that what's really going to win the contract or the client is an effective solution to a problem. But they often forget that the granting agency or client might not identify the problem in the same way. So, how can you convince those you're asking for money or support that you actually understand not only the problem, but the way *they* understand the problem? Put yourself in their shoes. It's no good offering a wonderful solution, only to have them say, "That's a good solution, but that's not the problem."

The most important part of proposal writing is needs assessment. That becomes the section where you establish for readers your definition of the problem and the community needs that you wish to meet. Convince your readers that you understand the problem in the same way they do. Or you must help them redefine the problem. From this approach, readers will see that you not only know what they know, but also have additional insights as well. That is how you gain the confidence of your reader: by demonstrating your thoroughness and your knowledge of the subject.

So ask yourself the question, "What does my audience think the problem is?" Not just what do I think it is. Think about it right from the beginning from the reader's perspective. If the proposal doesn't address the needs of its readers, they'll never understand it; they won't even read it. They perhaps couldn't care less. So, identify what you have in common and then set to educating your audience.

Other questions are a bit more tricky. Who, precisely, is your audience? An individual, a group, individuals from different levels of authority and expertise? Sometimes you have an audience that's definitely friendly. You've worked with them before; they've asked you for a proposal. But sometimes you're writing to an unknown and possibly unfriendly audience; you're just coming out of the blue. Different strategies may be required. Introduce yourself more thoroughly. Make sure you tell them enough about you and your organization so that a relationship of trust is established on the first page of the proposal. What is your audience's level of experience and education? Is your audience well-informed about the issues? Again, proposals may be purely educational documents when the audience does not know yet what the problem is. Inform them that it is a complicated problem, and explain up front how you have identified the problem. Educate them.

With current Native community-based justice issues, much goes into a good proposal. Educate your audience to your specific needs. Present the issue in relation to traditional Native methods of conflict resolution. Many people who control funding have little or no idea of the issues surrounding some problems.

Another point, related to the drafting of the proposal, is any previous connection between your organization and your audience. Have you made the best use of such connections? Some people are afraid to do this and feel that name-dropping is not really legitimate. Nonsense. Anything that helps your proposal, gets you a contract and money, is legitimate. Often what sells a proposal is simply that you worked for those people before, or someone in your group happens to know a well-placed individual such as a deputy minister. Exploit those connections for all they are worth. In the cover letter for the proposal, say, "Dear Bill, It's a pleasure to have the opportunity to send you another proposal. We admire your organization. We've enjoyed a very prosperous working relationship in the past and hope this continues." Ring all the bells you possibly can. If you've got somebody working for your organization that will be known to the people from whom you're trying to get money, mention his or her name in the cover letter, summary, and personnel parts of the proposal.

Think of your own experiences as readers. Again, I'm not talking about novels or murder mysteries. I'm talking about reading articles, reports, and proposals. Think about how long your concentration span is. We all think of ourselves as more or less serious, persevering, and hardworking. Research has shown that a reader's attention span in a proposal is about forty seconds and then starts to fall off markedly. You don't want a page that's just full of prose. You want to use bold headings and divide up your ideas to take advantage of this fact. If you give readers breaks on the page, then you have a chance of catching their interest two or three times on the page instead of just once at the beginning of the page.

Think about the forty-five seconds you have to get people's interest. If you use "We're very happy to submit this proposal. We look forward to hearing from you. Yours sincerely," there's about twenty seconds gone and you haven't grabbed *anybody's* interest. If you then provide an introduction—"X corporation has been in existence since 1947 and we have served very many happy council members and ..."—rather than a project proposal summary, they're already negatively disposed to what you have to say.

Be straightforward, to the point, and concise. Put your best foot forward as quickly as possible. Ask yourself what special features of your written submission would most appeal to your audience. Have you highlighted these to gain your audience's confidence? The look of your document is very important, especially when you're photocopying many copies. Have them laser-printed.

Some other issues related to the format of the proposal include the following. Try to keep the letterhead for your organization limited to the top of the page. Otherwise your letters will all be two pages long. Use adequate margins on all printed documents—at least one-and-a-half inches at the top, bottom, and sides. I recommend a two-inch allowance on the left-hand margin in case the proposal is bound later. These margins are probably bigger than most people are accustomed to, but they make the document "reader-friendly." Documents with inadequate white areas on the page are intimidating, so use lots of white space.

PURPOSE AND OCCASION

While the audience is the single most important determinate, purpose is also very important. Now that might sound somewhat obvious but it will clarify your proposal. Your purpose may be to get $100,000 to start a project, $50,000 for operating costs, or some money to hire new staff. Think about purpose in terms of audience, too. What purpose will this project serve? Who will be served? Who's going to benefit from this? The purpose for a proposal cannot simply be "If you give me this money, we will do great things." Rather the purpose could be "If you give me this money, we will serve the needs of this client base who have certain problems." So you must continuously attempt to get the purpose of the proposal across so the reader understands how you are going to affect the targeted group. That's your purpose.

Too many proposals come across as saying "Please help us because we are a worthwhile organization." Or "Please support us because we know what we are doing and people trust us." That is not enough. You must convince the reader that you are the organization that can best serve the needs of the client group: "We recognize their needs. We understand the problems. We can put together a project that will address those needs and hence serve those clients." You must always bring out in the proposal who you are going to serve with the money and the resources you are seeking. This way, you join up with the granting agency. They are not just giving the money to you, but directly to clients you are going to serve, clients they want to serve as well. In that way, your purpose and the purpose of your audience become one and the same.

The notion of occasion is important as well. Many people have difficulty determining how they can best arrange their ideas in a way that the audience is going to be most taken by them. Every good proposal should have a *hook* that really grabs the interest of the audience. More often than not, the hook comes from what you can tell your audience about the occasion of your proposal. How and in what way is the proposal timely?

How does it address a need that is current and must be addressed now? Will an opportunity be lost if the project does not proceed? Will a delay of a year or so make a situation that is too late to fix or too expensive? Is this absolutely the right time for your project? If so, say that. How has your organization reached the point where it's ready to take on this major project? Organize your proposal around its timeliness. That's the key.

In preparing proposals, use the rhetorical context as a focus for the creative force. Think about purpose, occasion, and audience. Let those ideas govern your brainstorming.

FREEWRITING

The simplest way to avoid gazing at a blank piece of paper or a blank computer screen, is to do a very, very simple exercise. Freewriting allows you to write without being self-critical. You have a blank piece of paper and a pen, a typewriter and paper, or a computer keyboard at hand—and you write. The only rule is you don't stop. Never. You never consult the dictionary. You never look in the file, You just sit there, say, for seven minutes and write; the only time you lift your pen off the paper is for a split second when you space out between words. You may find yourself writing, "This is nonsense." "My hand is getting tired." "Why am I bothering doing this?" Freewriting is only really useful when it's absolutely free and then it's a way of discovering ideas. Whatever is on your mind, write it down. But you have to have some focus. A five-minute freewrite really works. It's a great way to begin writing about any idea or project.

Do it in point form. Do it anyway you want as long as you don't stop moving the pen. The only rule is you don't stop writing. If that means point form, go with it.

There are no rules other than "let it rip" and don't stop letting it rip. If you run out of ideas on one train of thought, and think, "What the hell am I supposed to say?"—write that. On a very simple level, this method is an effective way of spending a short amount of time to avoid procrastinating. You can't procrastinate and do this. It is very easy in a sense because you just let it rip. You are not saying "I've got to finish it," or "I have to type this up or hand it to the secretary." There is no preconceived formula that you are filling out. This is the essence of the process.

You don't have the proposal yet. But you may have a draft for the introduction or some major parts of it. Take a minute and read what you have written. When you read, don't be critical. Read to find what part of your writing is interesting and stands out. It might only be one or two phrases. Separate the wheat from the chaff. Mark it. Put something on the page so that you can go back to it if you have to.

So what did you find? More or less than you bargained for? Keep the rhetorical context in mind:"What does my audience want here? What questions will my audience have?"

Freewriting will help you generate ideas about strategies, key ideas, and issues. These ideas may then be stressed in your cover letter, summary, or proposal. The exercise thus helps you focus on the essential. Often if you sit and think about what is essential, you reach few conclusions. But if you can free your mind from a critical, analytical mode and let it rip in this exercise, some essential points will emerge.

Freewriting will also give you confidence. You get better and better the more you do it. You get more and more able to identify essential matters quickly. You start thinking in terms of the rhetorical context, focusing on "What does my audience want to hear?"

THE STRUCTURE OF THE PROPOSAL

I recommend a title page and a contents page for any proposals that are longer than five or six pages. (This is for the reader's convenience. Remember, you are writing a proposal so that the reader will get the most out of it and not so you can just feel satisfied that you have put something down on paper.) The title page should include the proposal title, the name of your organization, the name of the funding organization (whether it is a government ministry, private company, or foundation), and, at the bottom of the page, the month and year the proposal was submitted.

A hint about formatting. When you centre something on the page, it doesn't look very effective. Raise it up a bit on the page and it will look much better. Then centre the date of the proposal on the bottom of the page.

It's amazing how many proposals have no title page. They have a cover letter and then go right to the introduction. Never attach the cover letter to the proposal. Keep it separate. Paper clip it to the proposal. Often the cover letter goes into a file or is forwarded elsewhere. Keep the proposal concise; most don't need to be much longer than ten or twelve pages.

Question **Workshop participant**. What about multiple issues in a proposal? A northern Alberta community wanted to develop a community correctional centre, taking over probation, establishing a youth centre, and a number of programs.

Response **Tom Grieve.** So the plan to address the need was multifaceted? This isn't an unbreakable rule. I'm just suggesting that many proposals are far too long. The reason they are too long is that they put information into the proposal that should go in the appendix. Write a proposal that can be read and understood by your audience in about fifteen to twenty minutes. And, if your readers want to look at the research you have used to support your ideas, data, statistics, testimonials, and supporting letters of need—put all that into appendices. Don't clutter up your proposal.

Many times you are reading a proposal and it seems to make sense. All of a sudden, you get five or six pages of data with no explanation. It is very, very confusing and not at all persuasive. So, when you put information like that in appendices, give your readers a brief summary of results or information.

In the table of contents, include the major headings and sub-headings exactly as they appear in the document. In most proposals, you'll have six or seven main headings with page numbers listed for the convenience of readers. The contents page is another very useful way of giving the reader an overview of the proposal.

For large government contracts, applicant organizations must often meet certain criteria when they respond to requests for proposals. Meet this requirement but still put forward your own ideas the best way you can. A simple strategy is to place a heading on the left hand side of the page that lists their criteria. (They are usually numbered in the request for proposals.) Then note the appropriate page reference for the convenience of the government agency.

Don't structure the proposal simply by answering questions. People do that. They just repeat the question; that's the proposal; and that's awkward. In many cases, you are asked to submit a proposal or you just send one in hoping. You have done some research to figure out the funding organization and you send them a proposal. With organizations that use standard forms, I often want to put "not applicable" in half of the boxes. They never give you enough room for the responses you want to give. And the forms themselves appear to have been manufactured years ago and are now out-of-date. So, what I do is call the organization and ask them if they require the completed form. If so, would they also accept a proposal summary as well as the form? I have never been turned down on that. Even organizations that insist on completed forms welcome proposal summaries. And that's a nice advantage because the other fifty applicants are just sending in forms. Some organizations say don't fill out the form, just give us a proposal. That's great, too, because in most cases filling out forms is detrimental to the applicant. They're difficult and often have hidden agendas. If you have the choice of writing a proposal or completing a form, choose the former. Create your own.

You are nearly always going to be in a position where you can submit a proposal and a form. Too often people just say, "I'll just fill out the form and be done with it." But that doesn't really allow you to argue your case. The cardinal virtue of good proposal writing is clarity. Explain what you need, why you need it, and what funding support will mean. People often think that conciseness is another great virtue of writing. But if you have a choice between being clear and being concise, be clear. Don't worry about extra words if they make your ideas clear. Too often people will assume, "They will understand what I mean. They will get the point. I'll just fill out the form, or I won't go into a long explanation about this because they will understand." But, in most cases, they don't.

There is nothing worse than somebody being concise and not telling you anything. We can all be extremely concise if we don't explain our ideas. Give me the money, thank you. That's concise.

What about an executive summary? The term is used when the reader of the document is someone in an executive capacity, such as a board of directors or a board chairperson. It's now a fairly generalized and acceptable term in the industry. Most people understand what you mean by an executive summary. I don't always use the term "executive." I usually just call it the summary or overview. The summary is absolutely the most crucial page of the proposal.

How do you write a summary? When I draft a proposal, I do one of two things. My usual method is to start with basic introductory information. What do I want to say about me and my organization—and how we relate to the project under discussion. Then I go through a needs assessment. I jot down ideas that correspond to the standard features of the proposal, that is, the introduction, needs assessment, proposed plan, and qualifications and experience. After I have completed this draft, I re-read the draft, and try to write a draft summary. If I feel I've got a real grip on what I am doing, I actually start my drafting procedure by writing a draft summary.

Don't confuse a summary and an introduction. A summary takes main points from each of the sections of the proposal. Some sentences relate to the introductory material, a few to the needs assessment, others to the solution that you are putting forward. Cite the qualifications of key personnel and the past experience of your company in this area. Mention what is important about your budget submission. A good rule of thumb for the length of a summary is about five to ten per cent of the proposal in length. So in a ten-page proposal, you have no excuse for going over a page in your summary.

The people who make the decisions may never read the entire proposal. They may flip through it. But what actually is used for their discussion is often the information in the summary. They've run off twenty copies of your executive summary—that key page—and that's all they're looking at. If you don't have that page, you have big problems.

That page includes introductory information and background on the problem and your organization, provides a summary of the needs assessment, identifies the client base, and stresses the timeliness of your application. What is your proposed plan? How are you going to try to effect a solution to the problem you have identified? Does your plan have different phases? What is your evaluation procedure? What is your budget? All on one key page.

Let me talk briefly about the other sections of the proposal. The introduction describes your company, organization, or yourself, if you are proposing an individual project. Then you explain the history and background of the problem. Convince the reader that you understand something about the history and background of the problem. Introduce yourself very briefly. Too many proposals spend far too long at the outset of a proposal blowing their horns about who they are. Most people who decide on proposals don't want to find that information first. They want to know what you know about the problem. So anything that you say about your organization should be said in the context of how that prepares your organization to understand the problem. Make a logical connection between who you are and the problem. That is the key to this section.

The introduction conveys your experience and helps your reader toward a general understanding of the need. Then you move into the needs assessment section, the most important part of the body of the proposal. Now that's where you want to be thorough. Sometimes it is simply not sufficient to examine the need from one perspective. You might want to examine it from several different perspectives. It is very good persuasive strategy to say that you can examine the problem from a variety of perspectives. Your proposal appears much more thorough if you take more than one approach to the problem, and then provide a logical reason for the approach you have selected. You also appear more attentive to the needs of the intended audience by offering them a selection.

This strategy also enables you to answer some of the objections your audience might have about your proposal. Your audience may say, "We always thought that this problem was best handled this way." You reply, "Well, this is the way people have done it in the past. We've examined this method but it is not as effective as the approach we are proposing." In this way, you can undercut your opposition for the contract.

Say something about staffing in your organization. People often mention staffing in their action plan and then forget to explain how their staff works within the organization. Granting agencies often want to hear how the staff and the organizational structure will help a plan come to fruition. In other words, they want to know how you work together as a team. Stress such things.

Accountability or evaluation assessments are other increasingly important components in the proposed plan. Include the ways in which your organization will be accountable to the client or to the granting agency. And explain that you will provide evaluations of the completed project from those who have been affected by its operations.Write this into the project proposal. Make a point of it in the summary. Say that you are going to do this. It is crucial. Note how you are going report on your progress; explain how the client or granting agency can check on ongoing progress, if that is part of your plan; provide a schedule for interim reports and the final report.

The qualifications section is next. Provide brief, focused résumés of key staff. A half-page maximum each. Focus the résumés on experiences that are directly relevant to the project. Much of this section can be done in advance. Have people in your organization write short notes so that, when you do a proposal, you can easily summarize their qualifications. Also provide a brief summary of your organization's past involvement in similar projects. Don't just list everything that you have done for the last decade. Keep the list short and pertinent to this particular area of the proposal.

List references if you can. This is becoming more and more important. If you have completed projects similar to the current proposal, and you have satisfied customers, ask them if they will serve as references. You may also have letters from satisfied clients. Keep those on file and include them in proposals when appropriate. A complimentary letter can say a lot. Refer to that letter in your summary or cover letter, too.

As much as possible, break down the budget for the proposed project in detail. Try not to use the headings "miscellaneous expenses" or "general operating" or "administration fee." Give a more specific explanation of the expense. If anything in your budget is going to raise the eyebrows of your reader—or raises your own eyebrows as you are setting it out—use a note system to provide further explanation.

Keep that reader in mind.

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